

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Agency or Division Name _____

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Wes Ward
Secretary of Agriculture

March 10, 2022

SUMMARY OF THE PROPOSED ARKANSAS INDUSTRIAL HEMP PRODUCTION RULE

Purpose

This memorandum analyzes the Arkansas State Plant Board's (Plant Board) proposed Hemp Production Rule.

Background

Act 565 of 2021, also known as the Arkansas Industrial Hemp Production Act (Act), was passed in response to the 2018 Farm Bill, which transitioned state hemp programs from research-only to a closely regulated industry. The Act requires the Department to obtain an approved state plan from the USDA under the 2018 Farm Bill for primary regulatory authority over hemp.

The Department obtained an approved state plan from USDA on December 10, 2021. The proposed Rule was reviewed by the Plant Board Industrial Hemp Committee on January 28, 2022, followed by approval of the proposed Rule by the full Plant Board's meeting March 3, 2022.

Since the Act repealed previous industrial hemp law, existing Board rules regarding industrial hemp will need to be repealed. The proposed Rule will implement the provisions of the new Act.

Key Points

- The proposed Rule will transition the state industrial hemp program from a research program to a closely regulated industry in compliance with the 2018 Farm Bill and USDA regulations.
- The proposed Rule continues to prohibit the retail sale of hemp floral material and prohibits the production or processing of industrial hemp for the purpose of manufacturing or distributing controlled substances.

Discussion

The Act provides that the Plant Board shall promulgate rules regarding sampling, testing, inspections, specific requirements for applications, and licensing fees. The Act also provides that the Board may adopt other rules necessary for the implementation of the Act. The Rule covers the areas necessary for oversight of industrial hemp production in Arkansas, including but not limited to the growing, processing, handling, storage, sale, transfer, importation, and distribution of industrial hemp.

Other specific matters covered by the Rule include acquisition of hemp seeds and seedlings, the importation of hemp into Arkansas, and the submission of planting reports to the Farm Service Agency as required by the Act. The Rule also continues to prohibit the retail sale of hemp floral material or the manufacture and distribution of controlled substances.

Conclusion

The Plant Board seeks review and approval of the proposed rule and repeal of current hemp rules.

REPEALED RULE

~~Arkansas Industrial Hemp Research Program Rules~~

~~APPROVED AND ISSUED BY:~~

**~~ARKANSAS STATE PLANT
BOARD~~**

**~~UNDER AUTHORITY of A. C. A. 2-15-401 et seq.
Arkansas Industrial Hemp Act~~**

~~Approved and effective August 31, 2018~~

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~~Arkansas Industrial Hemp Research Program Rules~~

~~As approved and effective August 31, 2018. Address communications to Arkansas Department of Agriculture, Industrial Hemp Program, 1 Natural Resources Drive, Little Rock, Arkansas 72205.~~

~~THE RULES~~

~~The Industrial Hemp research program rules were made by the Arkansas State Plant Board under authority of SECTION 1, Arkansas Code Title 2, Chapter 15, Subchapter — Arkansas Industrial Hemp Act 2-15-401 through 2-15-412, given in the Appendix.~~

~~SECTION 1. DEFINITIONS.~~ When used in these rules

~~(A).~~

- ~~(1) "Act" means Arkansas Industrial Hemp Act (A.C.A. 2-15-401 et seq)~~
- ~~(2) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application.~~
- ~~(3) "Approved cultivar" means any variety of industrial hemp designated by the Arkansas State Plant Board in a published list and may be amended from time to time.~~
- ~~(4) Association of Official Seed Certifying Agencies (AOSCA) "AOSCA Certified seed", "AOSCA Registered seed", and "AOSCA Foundation seed" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an AOSCA seed certifying agency or by the Organization for Economic Co-operation and Development (OECD) Seed Schemes. AOSCA Certified Seed programs provide standards and procedures approved by the United States Secretary of Agriculture to maintain and make available to the public high quality seed and propagating materials of superior crop plant varieties grown & distributed to insure genetic identity and purity.~~
- ~~(5) "Board" means the Arkansas State Plant Board.~~
- ~~(6) "Cannabis" means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts. Cannabis does not include publicly marketable hemp products, as defined in this rule.~~
- ~~(7) "CBD" means cannabidiol.~~
- ~~(8) "DEA" means the United States Drug Enforcement Administration.~~
- ~~(9) "Delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).~~
- ~~(10) "Department" means the Arkansas Department of Agriculture.~~
- ~~(11) "GPS" means Global Positioning System.~~
- ~~(12) "Grower Licensing Agreement" means a document executed by a person and the department authorizing the person to grow, handle and store hemp at one or more specified locations in Arkansas under the terms set forth in the document, Arkansas Industrial Hemp Act 2-15-401- 2-15-412, and this rule.~~
- ~~(13) "Handling" means possessing or storing industrial hemp for any period of time~~

~~on premises owned, operated, or controlled by a person licensed to cultivate or process industrial hemp. "Handling" also includes possessing or storing industrial hemp in a vehicle for any period of time other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person.~~

- (14) **"Industrial hemp"** shall be used interchangeably with "Hemp" and have the same meaning. ~~Hemp means *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, as defined in the Agriculture Improvement Act of 2018, 21 U.S.C. & 801 et seq. as it currently exists or as it may be subsequently amended.~~
- (15) **"Industrial hemp products"** or "hemp products" means products derived from, or made by, processing industrial hemp plants or plant parts, including without limitation:
- (A) Certified seed for cultivation if the seeds originate from industrial hemp varieties; (B) Cloth; (C) Cordage; (D) Fiber; (E) Food; (F) Fuel; (G) Paint; (H) Paper; (I) Particleboard; (J) Plastics; and (K) Seed, seed meal, and seed oil for consumption.
- (16) **"Law enforcement agency"** means the Arkansas State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.
- (17) **"Licensed Grower"** means an individual or business entity possessing a license issued by the department under the authority of this chapter to grow, handle, cultivate, process, or market industrial hemp or industrial hemp products.
- (18) **"Licensed Processor"** means a person in the state authorized by the department to process, handle, store, and market industrial hemp under the terms set forth in a Processor Licensing Agreement, as set forth in the policies developed under these rules.
- (19) **"Location ID"** means the unique identifier established by the applicant for each unique set of GPS coordinates where industrial hemp will be grown, handled, stored, or processed, which may include a field name or building name.
- (20) **"Marketing"** means promoting or selling a product within Arkansas, in another state, or outside of the United States. "Marketing" includes efforts to advertise and gather information about the needs or preferences of potential consumers or suppliers;
- (21) **"Nonviable seed"** means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (22) **"Person"** includes any individual, partnership, corporation, company, society, or association.
- (23) **"Pesticide"** means any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; intended to be used as a plant regulator, defoliant, or desiccant; or intended to be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
- (24) **"Phytocannabinoids"** are cannabinoids that occur naturally in the cannabis plant. The classical cannabinoids are formed through decarboxylation of their respective 2-carboxylic acids (2-COOH), a process which is catalyzed by heat,

light or alkaline conditions.

- (25) **"Plot"** means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.
- (26) **"Post-Harvest Sample"** means a sample taken from the harvested industrial hemp material from a particular plot's harvest in accordance with the procedures as defined in the policies developed under these rules; the entire plot's harvest must be in the same form (intact plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or industrial hemp materials from another plot.
- (27) **"ppm"** means parts per million.
- (28) **"Pre-Harvest Sample"** means a composite, representative portion from plants in an industrial hemp plot collected prior to harvest in accordance with the procedures as defined in the policies developed under these rules.
- (29) **"Processing"** means converting an agricultural commodity into a marketable form.
- (30) **"Processor Licensing Agreement"** means a document executed by a person and the department authorizing the person to process, handle, and store industrial hemp at one or more specified locations in Arkansas under the terms set forth in the document, Arkansas Industrial Hemp Act 2-15-401-2-15-412, and these rules.
- (31) **"Program"** means the Arkansas Industrial Hemp Research Program as established by the Arkansas Industrial Hemp Act, A.C.A. 2-15-401 et seq. and these rules.
- (32) **"Prohibited Variety"** means a variety or strain of cannabis excluded from the department's Industrial Hemp Research Program.
- (33) **"Propagule"** means a plant or plant part that can be utilized to grow a new plant.
- (34) **"Publicly marketable hemp product"** means a hemp product that meets one or more of the following descriptions:
- (a) the product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or decarboxylated delta-9-THC content above 0.3 percent; and does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing decarboxylated delta-9-THC above 0.3 percent).
 - (b) the product is CBD that was derived from industrial hemp, as defined in these rules; or
 - (c) the product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (35) **"Secondary Post-Harvest Sample"** means a post-harvest sample that is taken in a given plot or processing, handling or storage location after the first post-harvest sample is taken. A Secondary Post-Harvest Sample is taken on a different day than the initial post-harvest sample.
- (36) **"Secondary Pre-Harvest Sample"** means a pre-harvest sample that is taken in a given plot after the first pre-harvest sample is taken. A Secondary Pre-Harvest Sample is taken on a different day than the initial pre-harvest sample.
- (37) **"Seed source"** means the origin of the seed or propagules as determined by

~~the department.~~

- (38) ~~“Signing authority” means an officer or agent of the organization with the written power to commit the legal entity to a binding agreement.~~
- (39) ~~“Street address” means any postal address used for official purposes, specifically closest to industrial hemp plots/fields/greenhouses, storage buildings, or processing operations, for means of identifying different locations under the same hemp license.~~
- (40) ~~“Total THC” means the completion of the chemical reaction that converts THC acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value may also be calculated using a conversion formula that sums delta-9-THC and THC acid.~~
- (41) ~~“University” means an accredited institution of higher education located in Arkansas.~~
- (42) ~~“Variety” means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics by which it can be differentiated from other plants of the same kind. A variety also is “uniform” & “stable”—uniform in the sense that variations in essential and distinctive characteristics are describable; and “stable” in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.~~
- (43) ~~“Variety of Concern” means any variety of hemp in the program that tests above 0.3% total delta-9-THC in one (1) or more pre-harvest samples from diverse locations and production conditions. A hemp variety designated as a “Variety of Concern” may be subject to restrictions and additional testing. Materials testing at a total delta-9-THC concentration above 0.3 percent may be subject to law enforcement action.~~
- (44) ~~“Volunteer hemp plant” means an industrial hemp plant that was not intentionally planted, but results from a previous crop, growing on its own accord from seeds or roots in the years following an intentionally planted industrial hemp crop.~~

(B) — Definitions specific to industrial hemp seed production.

Industrial Hemp (*Cannabis sativa* L.) includes varieties of these kinds:

- (1) ~~“Dioecious type” means a type of industrial hemp that has male and female flowers on separate plants.~~
- (2) ~~“Industrial hemp seed production” means an industrial hemp seed production field established with an appropriate generation of AOSCA certified seed intended to produce a subsequent generation of AOSCA certified seed.~~
- (3) ~~“Licensed Plant Breeder” means an individual who has met the requirements listed in the Official Standards for Seed Certification in Arkansas (Circular 15) Under Act 73 of 1931; A.C.A. 1987 Sections 2-18-101 through 2-18-108.~~
- (4) ~~“Monoecious type” means a type of industrial hemp that has male and female flowers on the same plant.~~
- (5) ~~“Too male” means an intersexual plant that exceeds the ratio of male and female flowers as described in the variety description.~~
- (6) ~~“Unisexual female” means a monoecious type of industrial hemp plant that has sterile male and fertile female flowers.~~

- ~~(7) "Unisexual female hybrid" means a hybrid where the A line is a unisexual female type and the B line produces male fertile flowers.~~

SECTION 2. LICENSING

~~(A) Who must apply:~~

~~(1) Growers and Processor/Handlers:~~

~~A license to grow shall allow the license holder to obtain seed pursuant to these Rules for planting, possess seed for planting, cultivate the crop, harvest plant parts, possess and store harvested plant parts, and transport plant parts to a market for sale. The license holder must abide by the terms set forth in the Grower Licensing Agreement with the department.~~

~~A license to engage in the processing or handling of industrial hemp that does not fall within the definition of a "publicly marketable hemp product" shall allow the license holder to process, handle, and store industrial hemp at one or more specified locations in the state. The license holder must abide by the terms set forth in the Processor/Handler Licensing Agreement with the department.~~

~~(a) No person who does not hold a Hemp Grower or Processor/Handler license from the department shall grow, cultivate, handle, store, or process industrial hemp at any location within Arkansas.~~

~~(b) No person under the age of eighteen (18) years of age shall apply for or hold a Grower or Processor/Handler License.~~

~~(2) Two types of licenses can be issued by the department for cultivation or processing of industrial hemp in Arkansas:~~

~~(a) Research Only~~

~~(b) Research with Intent to Market~~

~~These types of licenses may include seed research projects through a university, private entity working with a university, or private entity working with a licensed plant breeder to develop industrial hemp seed varieties that would meet the requirements listed in in these rules in Section 5. Approved Seed For Planting.~~

~~(3) Applications for cultivation or processing of industrial hemp in Arkansas may be made at any time during the year, but the effective date of the license will be July 1st through June 30th annually. Renewal applications will be due June 15th.~~

~~(4) Applications shall be handled and processed by the department and reviewed for approval or denial. The department review process may require 60 days to complete. Acceptance of applications may be suspended for a period of time to allow the department staff adequate time to process applications and/or handle additional hemp related duties. Any delays or additional requirements for submitting applications may be set as policy and published on the department's industrial hemp webpage. After review and acceptance, the applicant will be notified to send the required application fees, and upon receipt, the license certificate will be issued.~~

~~(5) A person interested in holding a Grower License or Processor/Handler License shall complete the department's Industrial Hemp Application Form annually, or follow an established protocol or renewal process as notified. A person interested in both a grower license and a processor/handler license must complete both license applications.~~

- ~~(6) Failure to comply with any of these Rules or the provisions of the act, shall result in an automatic revocation of the license for the full remaining period of the license.~~
- ~~(7) An analytical testing of THC levels greater than 0.3% shall not result in revocation of a license so long as the crop is destroyed in accordance with these rules.~~
- ~~(8) Applicants shall disclose the date and location of any conviction of any criminal offense (other than misdemeanor traffic offenses) committed in any jurisdiction. Failure to comply with this requirement in a complete and truthful manner shall be grounds for denial, suspension, or revocation of a permit, as may be determined by the Industrial Hemp Committee and approved by the full board.~~
- ~~(9) The following applicants shall not be granted a permit:

 - ~~(a) Any applicants with any felony conviction in the prior 10 years~~~~
- ~~(10) Industrial hemp business licenses. Licensees must maintain all proper state, county and local business licenses and permits and comply with all applicable zoning rules.~~

~~(B) Application for Licenses~~

- ~~(1) **Growers License:** Growers in Arkansas who wish to cultivate industrial hemp shall submit to the department an application for a license to do so. The application shall include the following information for consideration:

 - ~~(a) Type of License as set forth in Section 2. A (2);~~
 - ~~(b) Full name, Arkansas residential address, telephone number and email address.~~
 - ~~(c) Street address, location ID, and GPS coordinates for each field, greenhouse, building or site where industrial hemp will be grown, handled, or stored, updated annually, or as needed; If the applicant represents a business entity, the full name of the business, the principal Arkansas business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address of the person;~~
 - ~~(d) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the GPS coordinates;~~
 - ~~(e) Research plan, including the proposed acreage or greenhouse/ indoor square footage to be planted;~~
 - ~~(f) Intended variety name, origin, and seed or plant certifying agency for each planting. This information must conform to Section 3 of these rules;~~
 - ~~(g) Intended marketable portion of the plant (seed, fiber, hurd, cannabinoids, not including THC, or certified planting seed or propagule as set forth in A.C.A. 2-15-401 et seq.); The department may limit the scope and acreage of research projects. Initial acreage may be limited to one acre or less.~~
 - ~~(h) Intended market, and intended purchaser's name and address if license is of the type "Research with Intent to Market";~~
 - ~~(i) Written statement of the research objective and data or observations to be collected and reported to the department. The research objective must conform to the authorized research purposes set forth in A.C.A. 2-15-401 et seq. The written statement in this section constitutes a written agreement between the license holder and the department.~~~~

- ~~(j) Evidence of income from a farming operation and/or agricultural or research experience. Examples may include tax returns (IRS 1040-schedule F), Farm serial number, or education in agriculture, research or related field. These will be listed on the license application form & instructions published annually when the current year application forms become available.~~
 - ~~(k) Intended storage location (expressed in GPS coordinates) for harvested plant parts;~~
 - ~~(l) Agreement to provide access to the department and law enforcement agencies at any time for sampling or inspection in the field or storage;~~
 - ~~(m) Agreement to ensure the monitoring and destruction of volunteers for three years following cultivation regardless of land lease or ownership status during that period;

 - ~~i. It shall be the responsibility of the license holder to monitor and destroy volunteers.~~
 - ~~ii. The responsibilities of the license holder in this provision may be transferred to another entity by mutual agreement in writing with both parties' signatures.~~~~
 - ~~(n) Agreement to maintain all records, including but not limited to those for agronomics, contracts, sampling, storage, expenses, transportation and delivery, as stated in Section Seventeen (17) of these rules.

 - ~~i. All records shall be kept within the state of Arkansas and made available for inspection on request.~~
 - ~~ii. An in-state agent shall be maintained for receipt of records or receipt of services.~~~~
 - ~~(o) Agreement to notify the department within one month if there are any changes or deviations; and~~
 - ~~(p) Agreement to notify the department if there are any changes to the license holder's address within one month of a change for the duration of the license.~~
 - ~~(q) Policies may be established and reviewed annually for necessary updates to address unforeseen needs. These will be published annually when the current year application forms become available.~~
 - ~~(r) An applicant shall not be a participant in the Program until the conditionally-approved applicant and the department have executed a Grower Licensing Agreement, which shall be signed within the industrial hemp grower application. The Grower Licensing Agreement shall set forth the terms and conditions governing participation in the Program. The terms and conditions set forth in the Agreement shall include, at a minimum, the requirements listed in the Act and in these rules for Licensed Growers and may include other requirements set as policy and published annually.~~
- ~~(2) **Processor/Handler License:** The Processor/Handler License Application form shall require applicants to submit, at a minimum, the following information and documents:~~
- ~~(a) Full name, Arkansas residential address, telephone number, and email address, if an email address is available;~~

- ~~(b) If the applicant represents a business entity, the full name of the business, the principal Arkansas business street address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;~~
- ~~(c) Research plan;~~
- ~~(d) Planned source of industrial hemp; and~~
- ~~(e) Maps and street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.~~
- ~~(f) Agreement to maintain all records, including but not limited to those for agronomics, contracts, sampling, storage, expenses, transportation and delivery, as stated in Section Seventeen (17) of these rules.

 - ~~i. All records shall be kept within the state of Arkansas and made available for inspection on request.~~
 - ~~ii. An in-state agent shall be maintained for receipt of records or receipt of services.~~~~
- ~~(g) Policies may be established and reviewed annually for necessary updates to address unforeseen needs. These will be published annually when the current year application forms become available.~~
- ~~(h) An applicant shall not be a participant in the Program until the conditionally approved applicant and the department have executed a Processor/Handler Licensing Agreement, which shall be signed within the industrial hemp processor application. The Processor/Handler Licensing Agreement shall set forth the terms and conditions governing participation in the Program. The terms and conditions set forth in the Processor/Handler Licensing Agreement shall include, at a minimum, the requirements listed in the Act and in these rules for Licensed Processors/Handlers and may include other requirements set as policy and published annually.~~

(C) Criminal History Background Check

- ~~(1) Each Licensed Grower, Processor/Handler or applicant shall undergo and pay for an annual criminal background check.~~
- ~~(2) Each person who is required to undergo an annual criminal background check shall:

 - ~~(a) Submit a criminal background check request to the Arkansas State Police or other law enforcement agency designated by the department;~~
 - ~~(b) Submit payment for the background check fee directly to the Arkansas State Police or other law enforcement agency designated by the department;~~
 - ~~(c) Following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days following the date the application was received by the department, directly from the Arkansas State Police or other law enforcement agency designated by the department.~~
 - ~~(d) The department shall not accept a report from a criminal background check that occurred more than 60 days prior to submission of the application.~~
 - ~~(e) Failure to submit the background check by the deadline stated in subsection-~~~~

- ~~(2) (c) shall be cause for denial of application.~~
- ~~(f) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check (for the substitute).~~

~~SECTION 3. LAND USE RESTRICTIONS~~

~~(For Licensed Growers or Licensed Processors/handlers.)~~

- ~~(A) A **Licensed Grower or Processor/Handler** shall not grow, process, or store industrial hemp in any structure that is used for residential purposes.~~
- ~~(B) A **Licensed Grower or Processor/Handler** shall not grow, store or process industrial hemp in any field or site that is located within 1,000 feet of a school, daycare or similar public areas frequented by children as determined by policy on an individual case basis by the department.~~
- ~~(C) An **applicant or licensed Grower or Processor/Handler** shall not include any property on their application or Site Modification Request to grow, cultivate or process industrial hemp that is not owned or completely controlled by the applicant or licensed grower.~~
- ~~(D) A **Licensed Grower or Processor/Handler** shall not grow, handle, process or store industrial hemp on property owned by or leased from any person who is ineligible or was terminated, or denied admission to the program for one or both of the following reasons:~~
- ~~(1) Failure to obtain an acceptable criminal background check~~
 - ~~(2) Failure to comply with an order from a representative of the department.~~
- ~~(E) A **Licensed Grower** shall not:~~
- ~~(1) plant or grow any cannabis that is not industrial hemp.~~
 - ~~(2) plant or grow industrial hemp on any site not listed in the Grower-Licensing Agreement.~~
 - ~~(3) handle or store leaf or floral material from industrial hemp within any structure that is used for residential purposes.~~
 - ~~(4) plant industrial hemp in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the department. Industrial Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.~~
- ~~(F) A **Licensed Grower** is required to post signage at all field locations. The signage shall include the following information:~~
- ~~(1) The Statement, "Arkansas Industrial Hemp Research Program"~~
 - ~~(2) License Holder's Name and License Number;~~
 - ~~(3) The department's telephone number.~~

~~SECTION 4. ADMINISTRATIVE APPEAL~~

~~(From denial of application)~~

- ~~(A) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.~~
- ~~(B) An appealing applicant shall mail a hearing request letter to the Industrial Hemp~~

Research Program, 1 Natural Resources Drive, Little Rock, Arkansas 72205.

- ~~(C) Appeals shall be heard by a three-person administrative panel whose members shall be designated by the Plant Board Director. The panel shall include at least one person who is a Program employee and at least one person who is not a Program employee and not involved or invested in any hemp research projects in Arkansas.~~
- ~~(D) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines set forth in this rule.~~
- ~~(E) Hearings on appeals shall be open to the public and occur at a time, date and location designated by the Plant Board Director.~~
- ~~(F) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.~~
- ~~(G) An appealing applicant shall be allowed up to fifteen (15) minutes to present arguments for reversing the department's denial of the application.~~
- ~~(H) A representative of the department shall be allowed up to fifteen (15) minutes to present arguments for affirming the department's denial of the application.~~
- ~~(I) The three members of the administrative panel shall rule on the appeal by a majority vote.~~

SECTION 5. APPROVED SEED FOR PLANTING

~~(A) (For Licensed Growers or Licensed Processors/handlers.)~~

- ~~(1) Approved seed or transplants for cultivating industrial hemp in Arkansas shall be from one of the following:
 - ~~(a) Seed or transplants produced from seed or living plant parts that meet the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the Official Standards for Seed Certification in Arkansas, including certification by other AOSCA seed agencies recognized by the Arkansas Seed Certification Program. All such seed and transplants shall include a certifying tag of varietal purity issued by Arkansas Seed Certification Program or another official certifying agency as defined in these rules (Section 1 A. 3) or~~
 - ~~(b) As allowed by the Industrial Hemp Research Program, seed or transplants produced lawfully under an industrial hemp research program within the United States provided that the seed or transplants have accompanying documentation of:
 - ~~i. being produced by a licensed grower within the state of production, and~~
 - ~~ii. have accompanying documentation that the crop from which the seed or transplants were harvested had a THC analysis of 0.3% or less by~~~~~~

dry weight, and

~~iii. the variety is listed as an approved variety published annually in the Industrial Hemp Research Program guidance policy.~~

~~iv. the variety owner's permission has been granted.~~

~~(2) Growers or other organizations in Arkansas may produce seed or transplants for distribution or sale for cultivation, if the source is Subparagraph (a)(1) of this Rule, in subsequent years only if it is overseen and certified by the Arkansas Seed Certification Program to be true to type under Association of Official Seed-Certifying Agencies' (AOSCA's) guidelines: Industrial Hemp (Cannabis sativa L. Subsp. Sativa) Certification Standards. No other seed or transplants may be produced in Arkansas for distribution or sale in Arkansas unless approved by the Industrial Hemp Research Program.~~

~~(3) All seed or transplants produced in Arkansas for distribution or sale in Arkansas to be utilized for cultivation of industrial hemp shall include a certifying tag of varietal purity issued by the Arkansas Seed Certification Program or another official certifying agency as defined in the above Section 1: Definitions.~~

~~(4) A business entity, including an agricultural co-operative enterprise ("co-op") or other farm aggregator ("aggregator") who contracts with one or more permitted growers, may, upon registering with the department, obtaining any required permitting from the United States Drug Enforcement Agency, and pursuant to Federal and State law, obtain bulk quantities of seed or transplants approved under this Rule for distribution to permitted growers. A permitted grower may own and plant seed or transplants obtained from such registered co-ops or aggregators, who must document quantities delivered to each named grower within 10 days of delivery.~~

~~(B) All Industrial Hemp seed or transplants sold within or into Arkansas must be labeled as to variety or hybrid name. Labelers of seed or transplants must provide to the board breeder descriptions and variety release information including any subsequent updates/amendments to these descriptions.~~

~~(1) For purposes of labeling, the number or other designations of hybrid industrial hemp shall be used as a variety name.~~

~~(2) All Industrial Hemp seed for planting purposes sold within or into Arkansas is subject to the rules in the Board's Circular 10: Regulations on the Sale of Planting Seed in Arkansas.~~

~~SECTION 6. Seed/Propagule Acquisition~~

~~(A) Seed/Propagule acquisition from a source within Arkansas~~

~~(1) No department pre-approval shall be required for a transfer of hemp seed or propagules of any variety listed on the department's published Summary of Varieties list, excluding Prohibited Varieties, between Arkansas Licensed Growers and/or Licensed Processors/Handlers within Arkansas.~~

~~(2) A Licensed Grower or Licensed Processor/Handler shall not buy, sell, possess, or transfer hemp seeds or propagules to or from any person in Arkansas without first verifying that the person is licensed as required by these rules.~~

- ~~(3) Upon request from a representative of the department, a Licensed Grower or Licensed Processor/Handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.~~

~~**(B) Seed/propagule acquisition from a source in a U.S. territory, tribal land, or state other than Arkansas.**~~

- ~~(1) No person shall acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than Arkansas without first:~~
- ~~(a) Submitting a complete Domestic Seed/Propagule Request form and all required attachments, and~~
 - ~~(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.~~
- ~~(2) A Domestic Seed/Propagule Request shall not be approved unless the Licensed Grower or Processor/Handler affirms in writing that the requested seed acquisition plan will not infringe on the intellectual property rights of any person.~~
- ~~(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department THC test results showing that floral material sampled from mature plants that produced the seed or propagule variety has a total_delta-9-THC content of not more than 0.3 percent on a dry weight basis from an independent third-party laboratory.~~
- ~~(4) A person acquiring seeds or propagules from a source outside Arkansas shall arrange for the seeds or propagules to arrive at the department's facility at 1 Natural Resources Drive, Little Rock, Arkansas 72205 or at a location designated by the department, for inventory and distribution.~~
- ~~(5) Upon request from a representative of the department, a Licensed Grower or Processor/Handler shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department facility.~~

~~**(C) Seed/propagule acquisition from a source outside the United States.**~~

- ~~(1) A person seeking to obtain seeds/propagules from an international source shall submit a complete International Seed Request form to the department.~~
- ~~(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration, if required.~~
 - ~~(b) No person shall acquire seeds/propagules from a source outside the United States unless the department first obtains a Permit to Import from the DEA, if required.~~
- ~~(2) No person shall acquire propagules or seeds from outside the United States, unless all federal and state requirements have been met and the acquisition is approved by the department.~~
- ~~(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Arkansas. All Licensed Growers intending to plant the requested seed must be listed on the request form.~~
- ~~(4) The department shall not approve an International Seed Request form unless the Licensed Grower or Processor affirms in writing that the planned activities will not~~

~~infringe on the intellectual property rights of any person.~~

- ~~(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants that produced the seed variety have a floral material total THC content of not more than 0.3 percent on a dry weight basis.~~
- ~~(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds/propagules to arrive at the department's facility at 1 Natural Resources Drive, Little Rock, Arkansas 72205, or at a location designated by the department, for inventory and distribution.~~
- ~~(7) Upon request from a representative of the department, a Licensed Grower or Processor/Handler shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's designated facility.~~

~~(D) **Seed/Propagules of wild, landrace, or unknown origin.**~~

- ~~(1) No person shall acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.~~
- ~~(2) Hemp or cannabis seeds or propagules of wild, landrace, or unknown origin shall not be permitted to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from such seeds or propagules by the department or its designee.~~
- ~~(3) Any Licensed Grower or Licensed Processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department may be subject to suspension or revocation of their license and forfeiture without compensation of their materials.~~

SECTION 7. PLANTING REPORTS

~~(A) **Planting Reports for Outdoor Plantings.**~~

- ~~(1) A Licensed Grower shall submit to the department a complete and current Field Planting Report, within ten (10) days after every planting, including replanting, of seeds or propagules in an outdoor location.~~
- ~~(2) Each Field Planting Report shall identify the correct variety name as designated upon approval of the acquisition request or as approved by the department, the field location ID as listed in the Grower Licensing Agreement, the planting date and the primary intended use of the harvest for each planting.~~
- ~~(3) A Licensed Grower who does not plant hemp in an approved outdoor site listed in the Grower License Agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and will not be planted at that site.~~

~~(B) **Planting Reports for Indoor Plantings.**~~

- ~~(1) A Licensed Grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within ten (10) days after establishing plants at an indoor location.~~

- ~~(2) Each Greenhouse/Indoor Planting Report shall identify the correct hemp variety name as designated in the Seed/Propagule Request form and approved by the department, the greenhouse or indoor growing location ID as listed in the Grower Licensing Agreement, the planting date and the primary intended use for the harvest of each planting.~~
- ~~(3) In addition to the initial Greenhouse/Indoor Planting Report, a Licensed Grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the department. Greenhouse/Indoor Planting Reports are due no later than March 31, June 30, September 30, and December 31.~~

~~SECTION 8. SITE ACCESS~~

~~For Representatives of the department and Law Enforcement Agencies.~~

- ~~(A) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Arkansas State Police, DEA, and other law enforcement or cooperating agencies whose representatives request registered site information, including GPS coordinates.~~
- ~~(B) Licensed Growers and Licensed Processors/Handlers shall have no reasonable expectation of privacy with respect to premises where industrial hemp seeds, plants, or materials are located, and any premises listed in the Grower or Processor/Handler Licensing Agreements.~~
- ~~(C) A Licensed Grower or Licensed Processors/Handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where industrial hemp seeds, plants, or materials are located and any premises listed in the Grower or Processor/Handler Licensing Agreements with or without cause and with or without advanced notice.~~
- ~~(D) A Licensed Grower or Licensed Processor/Handler shall obtain in writing from the owner of any leased or rented field or structure the owner's acknowledgement they will abide to the terms listed in Section 8. Site Access~~

~~SECTION 9. PESTICIDE USE~~

- ~~(A) A Licensed Grower who uses a pesticide on hemp must be certified to apply pesticides pursuant to Federal and Arkansas laws and Board rules.~~
- ~~(B) A Licensed Grower shall not use any pesticide in violation of the product label.~~
- ~~(C) A Licensed Grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.~~
- ~~(D) The department shall have the authority to perform pesticide testing on a random basis or when representatives of the department have reason to believe that a~~

~~pesticide may have been applied to hemp in violation of the product label.~~

- ~~(E) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.~~

SECTION 10. LICENSED GROWER'S RESPONSIBILITY- Prior to Harvest

- ~~(A) The department may collect samples of any industrial hemp (Cannabis sativa L.) material at any time.~~
- ~~(B) A Licensed Grower shall submit a complete and current Harvest/Destruction Report form to the department at least 15 days (or the number of days established in the department's published guidance policy) prior to the intended harvest date or intended destruction of a failed crop.~~
- ~~(C) The department's receipt of a Harvest/Destruction Report triggers a Pre-harvest sample collection by the department.~~
- ~~(D) During the department's scheduled sample collection, the grower or an authorized representative shall be present at the growing site.~~
- ~~(E) Representatives of the department shall be provided with complete and unrestricted access to all industrial hemp (Cannabis sativa L.) plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all industrial hemp (Cannabis sativa L.) plants; and all locations listed in the Grower Licensing Agreement.~~
- ~~(F) The Licensed Grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.~~
- ~~(G) Should the Licensed Grower fail to complete harvest within fifteen (15) days, the department may order a Secondary pre-harvest sample of the plot, and the Licensed Grower shall be assessed a Secondary Pre-Harvest Sample Fee per plot in the amount specified in the section on fees prior to the department collecting the sample.~~
- ~~(H) Harvested materials from Varieties of Concern shall not be commingled with other harvests without prior written permission from the department.~~
- ~~(I) Floral materials harvested for phytocannabinoid extraction shall not be moved outside the state or beyond a processor, nor commingled, nor extracted, until the releases the material in writing.~~
- ~~(J) A Licensed Grower who fails to submit a Harvest/Destruction Report or who does submit a Harvest/Destruction Report and proceeds to harvest a crop prior to a sample being collected by the department shall be subject to revocation of their license.~~

SECTION 11. ~~SAMPLING AND ANALYSING HEMP~~

~~All plantings of industrial hemp listed in licensed Grower Applications/Agreements or products derived from industrial hemp or cannabis in possession of a Licensed Processor/Handler are subject to sampling for THC levels. The sampling method shall be per guidelines adopted by the department for collecting regulatory samples of industrial hemp. The license holder shall be responsible for the cost of all laboratory analytical services of the sample, billable to the license holder by the laboratory performing the analysis.~~

~~(A) Sample Collection:~~

~~(1) **Licensed Growers:** A number of days (determined by the department and published annually as policy) prior to harvesting or destroying any hemp plants, a participant must submit to the department a Harvest/Destruction Notification Form. The department will notify the participant of the date and approximate time when samples will be collected from the participant's plot(s) and/or greenhouse(s). The department will collect samples from each plot or greenhouse, in accordance with the department's sampling and testing procedures (published annually as guidelines/policy). The participant or a knowledgeable representative must be present for the sample collection. Samples must be collected prior to any harvest or destruction of plants within that plot or greenhouse. The department reserves the right to collect any number of samples at any time.~~

~~(2) **Licensed Processor/Handlers:** The department shall have the authority to collect and retain samples of industrial hemp and products derived from all industrial hemp in the possession of a Licensed Processor/Handler.~~

~~a) If final products are any type of consumable, and are intended for human consumption the processor/handler is responsible for obtaining any required state and federal food safety permits.~~

~~(B) Representatives of the department collecting or transporting the samples shall have the legal right to possess industrial hemp in Arkansas for purposes of collecting the sample and transporting the sample to a laboratory for analysis. The laboratory performing the analysis shall have the legal right to possess industrial hemp, perform the analysis, and retain a portion of the sample. All samples collected by the department become the property of the department and are non-returnable. No compensation shall be owed by the department.~~

~~(C) Laboratory Testing:~~

~~The department will select samples for testing in accordance with its THC Testing Protocol (published annually as guidelines/policy). If harvesting floral material, the participant must wait for THC test results prior to co-mingling of the individual plot or variety with harvested materials from different plots or varieties, or undertaking any extraction activities.~~

~~(1) When possible, all testing will be conducted by the department. Other labs may be used if authorized by the department. As soon as it is available, the results of~~

~~the THC analysis shall be reported to the department and the holder of the license.~~

- ~~(2) Samples with a total THC level equal to or below 0.3% THC shall require no further action and the area or harvested plant material from which the sample was obtained shall be released for marketing or further processing.~~
- ~~(3) Samples with a total THC level greater than 0.3% THC shall be reported by the department to the licensee and to the board's Industrial Hemp Committee. The license holder may request a re-test of the sample. If no re-test is requested, or the re-tested sample is greater than 0.3% THC, the area represented by the sample, or any harvested plant parts from the area represented by the sample shall be subject to the following disposition:
 - ~~(a) Industrial hemp stalks (denuded) may be harvested, processed and used for fiber and/or any other lawful purpose; or~~
 - ~~(b) Industrial hemp seed may be harvested, processed, and rendered non-viable for food products, provided the source of the seed or transplants is seed or transplants produced from seed or a living plant part which meets the criteria for Breeder, Foundation, Registered, or Certified categories as defined by the Arkansas Seed Certification Program, including certification by other seed agencies recognized by AOSCA, and include a certifying tag of varietal purity issued by the department or another official certifying agency as defined in Section 1 of these rules.~~~~
- ~~(4) If industrial hemp plant parts are harvested from a field, greenhouse, or a variety within a field or greenhouse, and are co-mingled with plant parts from another field, greenhouse, or variety within a field or greenhouse, prior to having knowledge of the results of the sample, the license holder does so at his or her own risk and with full knowledge that if an analysis of greater than 0.3% THC is returned, all co-mingled plant parts shall be destroyed.~~
- ~~(5) No plants or plant parts harvested from a planting being tested shall be marketed until released by the department.~~
- ~~(6) All samples become the property of the department and are non-returnable. No compensation shall be owed by the department.~~

SECTION 12. Restrictions on Sale or transfer

- ~~(A) A Licensed Grower or Licensed Processor/Handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the state who does not hold a license issued by the department.~~
- ~~(B) A Licensed Grower or Licensed Processor/Handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the state of Arkansas (but within the United States) who is not authorized by a university or state department of agriculture under the authority of the Act and the laws of that state. The Licensed Grower or Licensed Processor/Handler is responsible for ensuring that such sale or transfer is lawful in other states.~~
- ~~(C) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, seed oils, nonviable seeds including seed meal and seed oils for consumption as~~

~~human food or animal feed, floral and plant extracts and other marketable hemp products to members of the general public, both within and outside the state, provided that the marketable hemp product's total THC level is not more than 0.3 percent.~~

- ~~(D) A Licensed Grower or Licensed Processor/Handler selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's total THC level is not more than 0.3 percent.~~
- ~~(E) The department shall permit a Licensed Grower or Licensed Processor/Handler to transfer up to one (1) pound of hemp material per transfer to testing laboratories, both within and outside the state, for the purpose of measuring THC, CBD, or other phytocannabinoid profile levels. It is the responsibility of the Licensed Grower to ensure compliance with laws in other states.~~
- ~~(F) Licensed Growers or Licensed Processor/Handlers shall comply with the federal Food Drug and Cosmetic Act and all other applicable local, state, and federal laws and rules relating to product development, product manufacturing, consumer safety, and public health.~~
- ~~(G) A Licensed Grower or Licensed Processor/Handler shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the Prohibited Products List set forth in A.C.A. 2-15-401 et seq.: Arkansas Industrial Hemp Act.~~
- ~~(H) A Licensed Grower or Licensed Processor/Handler shall not:~~
 - ~~(1) plant, grow, store or process hemp on any site not listed in the Grower Licensing Agreement or Processor/Handler License Agreement;~~
 - ~~(2) transport live hemp plants, viable seeds, leaf materials or floral materials to unapproved locations including trade shows, county fairs, educational or other events, celebrations, ceremonies or any other address not listed in the grower or processor's current Grower Licensing Agreement or Processor/Handler License Agreement except by express written permission from the department;~~
 - ~~(3) allow unsupervised public access to industrial hemp plots or plantings.~~

SECTION 13. REPORTING

~~Licensed Growers and Licensed Processor/Handlers are required to submit several reports listed in the Act and in these rules. Forms for these required reports will be provided by the department. These forms may include other requirements set as policy and published annually.~~

Production Reports:

- ~~(A) Licensed participants shall report, annually by December 31st, to the department, the following information:~~
 - ~~(1) Licensed Growers:~~
 - ~~(a) Acreage, or greenhouse space planted, planting date, harvested date, and~~

~~varieties grown;~~

~~(b) Weight and type of plant part marketed, purchaser, and research information provided to the department or participating Arkansas Universities; and~~

~~(c) Current industrial hemp plant parts in storage and location of storage.~~

~~(2) Licensed Processors/Handlers shall report the source, total weight and type of raw industrial hemp processed, as well as the amount and composition/nature of final marketable hemp products made.~~

~~(B) Participants in the Industrial Hemp Program must submit a completed Production Report form. Grower & Processor/Handler License holders shall report annually to the department the research data or observations collected and reported in provided forms or templates from the cultivation or processing of industrial hemp as stated on the license application forms and in these rules. Failure to submit a fully complete and truthful Production Report form may result in denial to participate in future Industrial Hemp Research Programs.~~

SECTION 14. Fees and Services

~~(A) Each application shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00).~~

~~(B) A license is issued for one year, for an annual fee of two hundred dollars (\$200.00).~~

~~(C) For a renewal license, the same fee schedule will apply as in Paragraph (C) of this Rule.~~

~~(D) Fees paid for a license are not refundable once the licensee takes possession of seed or transplants or if the license is revoked for any cause over the duration of the license.~~

~~(E) The initial and renewal license fees are due annually when the license applicant is notified of the acceptance of a license application and before the licensee takes possession of the seed or transplants, whichever is earlier.~~

~~(F) The license holder shall be responsible for the cost of all inspection and sampling services.~~

~~(G) The license holder shall be responsible for the cost of all laboratory analytical services.~~

~~(H) Any applicant or licensee participating in the Arkansas Seed Certification Program is responsible for all fees and rules associated with the program.~~

~~(I) The license holder shall be responsible for the cost of any other oversight required by the board. This may include site verification visits, seed/propagule verification visits,~~

~~pesticide residue testing, staff time, and program administration. A fee schedule will be established on an annual basis and published on the department's website or be available on request.~~

~~(J) Established Fees~~

~~(1) Grower Applications~~

- ~~(a) \$50 Application Fee (non-refundable)~~
- ~~(b) \$200 License Fee~~
- ~~(c) \$200 Modification Fee (per modification, max. of 3 allowed per license year)~~
- ~~(d) Applied Acreage Fee~~
 - ~~i. \$50 for less than 5 acres~~
 - ~~ii. \$100 for 5 to less than 50 acres~~
 - ~~iii. \$250 for 50 to less than 100 acres~~
 - ~~iv. \$500 for 100 to less than 200 acres~~
 - ~~v. \$1000 for greater than 200 acres~~
- ~~(e) \$100 applied Greenhouse fee (each greenhouse)~~
- ~~(f) \$100 Lab Sample Fee (per lab compliance sample)~~
- ~~(g) \$100 GPS Verification Fee for Each Location ID~~
- ~~(h) \$25 Hemp Transfer Fee (each transfer)~~

~~(2) Processor/Handler License~~

- ~~(a) \$50 Application Fee (non-refundable)~~
- ~~(b) \$200 License Fee~~
- ~~(c) \$200 Modification Fee (per modification, max. of 3 allowed per license year)~~
- ~~(d) \$100 Lab Sample Fee (per lab compliance sample)~~
- ~~(e) \$100 GPS Verification Fee, each Location ID~~
- ~~(f) \$25 Hemp Material Transfer Fee (each transfer)~~
- ~~(g) Applied Producer Fee~~
 - ~~i. \$1500 for Flower/Bud Material~~
 - ~~ii. \$500 for Fiber, Seed and Grain~~
 - ~~iii. \$500 Handler Fee~~

SECTION 15. License Suspension or Revocation

- ~~(A) The department shall notify a Licensed Grower or Processor in writing that the Licensing Agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensee has:~~
- ~~(1) Engaged in conduct violating a provision of this rule, the Act, or the Grower Licensing Agreement;~~
 - ~~(2) Made a false statement to a representative of the department or a law enforcement agency;~~
 - ~~(3) Been found to be growing or in possession of cannabis with a measured total THC concentration at or above 3 percent; or~~

- ~~(4) Failed to comply with an order from a representative of the department or a law enforcement agency.~~
- ~~(B) A person whose Licensing Agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.~~
- ~~(C) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the Licensee's premises and perform an inventory of all industrial hemp, and hemp products that are in the Licensee's possession.~~
- ~~(D) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.~~

SECTION 16. GRANT FUNDS

- ~~(A) If grant funds become available, an applicant must apply on forms supplied by the department. Applications will be evaluated on a competitive basis (if appropriate) by a department appointed review committee.~~
- ~~(B) Records will be required to be kept, reported and made available for audits.~~
- ~~(C) If it is determined any grant funds were spent inappropriately, refunds will be required.~~

SECTION 17. PROHIBITIONS SUMMARIZED:

The prohibitions listed below shall not invalidate any provisions of these rules through omission or repetition, but shall be a supplement thereto.

No person shall:

- ~~(A) — Sell, offer, expose, distribute or transport industrial hemp seed or transplants not produced or labeled in accordance with the provisions of the above rules or having a false or misleading labeling;~~
- ~~(B) — Sell, offer, expose, distribute or transport industrial hemp seed not labeled in accordance with the provisions listed in the Board's Circular 10, Regulations on the Sale of Planting Seed in Arkansas including selling seed containing prohibited noxious weeds or excessive numbers of noxious weeds;~~
- ~~(C) — Sell, offer, or expose for sale any industrial hemp seed labeled AOSCA "Certified Seed," "Registered Seed," or "Foundation Seed," unless it has been~~

~~produced and labeled in compliance with the rules of an officially recognized AOSCA seed-certifying agency or association;~~

- ~~(D) — Fail to comply with sample collection and testing requirements prior to harvesting or destroying any hemp plants, in accordance with these rules;~~
- ~~(E) — Detach, alter, deface, or destroy any labeling or other required documentation specified in these rules, or alter or substitute seed or transplants in a manner that may defeat the purpose of these rules;~~
- ~~(F) — Disseminate any false or misleading advertisement concerning industrial hemp seed or propagating material in any manner or by any means;~~
- ~~(G) — Hinder or obstruct in any way any authorized agent(s) of the department or law enforcement in the performance of their duties;~~
- ~~(H) — Fail to comply with all licensing and reporting requirements as outlined in these rules or in the Act;~~
- ~~(I) — Fail to keep required records including but not limited to those for agronomics, contracts, sampling, storage, expenses, transportation and delivery, and income, while the license is valid and for at least three years thereafter, or make available for inspection such records to the department or any authorized agent thereof;~~
- ~~(J) — Fail to keep the agreement ensuring the monitoring and destruction of hemp plant volunteers for three years following cultivation regardless of land lease or ownership status during that period.~~
- ~~(K) — Represent industrial hemp seeds which are indistinguishable by seed characteristics to be of a recognized variety, without having adequate information for such variety representation, such as that they were grown from AOSCA Certified seed on land free of volunteer plants that might affect the purity of the seed under consideration, and if a cross-pollinated crop, isolated so as to prevent cross-pollination, and handled in harvesting, storing and processing so that the varietal purity and quality of the seed is maintained;~~
- ~~(L) — Fail to comply, upon request of the department of any producer of industrial hemp seed (including hybrids), who wishes to offer their seed for sale in the state, to give the department a complete description of the characteristics of the variety or hybrid and become certified under the Arkansas Certified Seed Program.~~
- ~~(M) — Provide false, misleading, or incorrect information to the department pertaining to the licensee's cultivation or processing of industrial hemp by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of industrial hemp~~

~~research plots / production in these rules or in the Act;~~

- ~~(N) Plant, grow, store, transfer or process hemp on, from or to any site not listed in the Grower Licensing Agreement or Processor/Handler License Agreement;~~
- ~~(O) Sell or transfer, or permit the sale or transfer, of living plants, viable seeds, living or dried/ground leaf material, or floral material to any person in the state who does not hold a license issued by the department, or to any unauthorized person outside the state.~~

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APPENDIX

~~For An Act To Be Entitled~~

~~AN ACT TO CREATE THE ARKANSAS INDUSTRIAL HEMP ACT; TO CREATE A RESEARCH PROGRAM TO ASSESS THE AGRICULTURAL AND ECONOMIC POTENTIAL OF INDUSTRIAL HEMP PRODUCTION IN ARKANSAS; AND FOR OTHER PURPOSES.~~

Subtitle

~~TO CREATE THE ARKANSAS INDUSTRIAL HEMP ACT; AND TO CREATE A RESEARCH PROGRAM TO ASSESS THE AGRICULTURAL AND ECONOMIC POTENTIAL OF INDUSTRIAL HEMP PRODUCTION IN ARKANSAS.~~

~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:~~

~~**SECTION 1.** Arkansas Code Title 2, Chapter 15, is amended to add an additional subchapter to read as follows:~~

~~Subchapter — Arkansas Industrial Hemp Act
2-15-401. Title.~~

~~This act shall be known and may be cited as the "Arkansas Industrial Hemp Act".~~

~~2-15-402. Legislative intent.~~

~~This subchapter is intended to assist the state in moving to the forefront of industrial hemp production, development, and commercialization of hemp products in agribusiness, alternative fuel production, and other business sectors, both nationally and globally, and to the greatest extent possible.~~

~~2-15-403. Definitions.~~

~~As used in this subchapter:~~

- ~~(1) "Agribusiness" means the processing of raw agricultural products, including without limitation timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;~~
- ~~(2) "Certified seed" means industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted by federal law under the Controlled Substances Act, 21 U.S.C. § 801.11 et seq.;~~
- ~~(3) "Grower" means a person licensed to grow industrial hemp by the State Plant Board;~~
- ~~(4) "Hemp product" means a product made from industrial hemp, including without limitation:

 - ~~(A) Certified seed for cultivation if the seeds originate from industrial hemp varieties;~~
 - ~~(B) Cloth;~~
 - ~~(C) Cordage;~~
 - ~~(D) Fiber;~~
 - ~~(E) Food;~~
 - ~~(F) Fuel;~~
 - ~~(G) Paint;~~
 - ~~(H) Paper;~~
 - ~~(I) Particleboard;~~
 - ~~(J) Plastics; and~~
 - ~~(K) Seed, seed meal, and seed oil for consumption;~~~~
- ~~(5) "Industrial hemp" means all parts and varieties of the plant Cannabis sativa, cultivated or possessed by a licensed grower, whether growing or not, that contain a tetrahydrocannabinol concentration of no more than that adopted by federal law in the Controlled Substances Act, 21 U.S.C. 32 § 801 et seq.;~~
- ~~(6) "Seed research" means research conducted to develop or recreate better strains of industrial hemp, particularly for the purposes of seed production; and~~

~~(7) "Tetrahydrocannabinol" means the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, Cannabis sativa, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.~~

~~2-15-404. State Plant Board — Research program.~~

- ~~(a) (1) The State Plant Board may adopt rules to administer the industrial hemp research program and to license persons to grow industrial hemp under this subchapter.~~
- ~~(2) The board may include as part of its rules the establishment of industrial hemp testing criteria and Protocols.~~
- ~~(b) (1) The board shall promote research and development concerning industrial hemp and commercial markets for Arkansas industrial hemp and hemp products.~~
- ~~(2) The board may work in conjunction with the Division of Agriculture of the University of Arkansas and the Cooperative Extension Service of the University of Arkansas regarding industrial hemp research programs.~~
- ~~(3) (A) The board may undertake research concerning industrial hemp production through the establishment and oversight of a ten-year industrial hemp research program.~~
- ~~(P) In conjunction with the Division of Agriculture of the University of Arkansas, the board may create a program consisting primarily of demonstration plots planted and cultivated in this state by growers licensed under this subchapter.~~
- ~~(Q) The board may determine the location, and the total number and acreage, of each demonstration plot.~~
- ~~(D)(i) In conducting research under this subchapter, higher tetrahydrocannabinol concentration varieties of industrial hemp may be grown to provide breeding strains to revitalize the production of industrial hemp.~~
- ~~(ii) However, tetrahydrocannabinol levels shall not exceed three-tenths of one percent (0.3%).~~
- ~~(4) The board may seek permits or waivers from the United States Drug Enforcement Administration or appropriate federal agency that are necessary for the advancement of the industrial hemp research program.~~
- ~~(5) In conjunction with the Division of Agriculture of the University of Arkansas, the board may:~~
- ~~(A) Oversee and analyze the growth of industrial hemp by selected and licensed growers for agronomy research and analysis of required soils, growing conditions, and harvest methods relating to the production of industrial hemp that may be suitable for various commercial hemp products, including without limitation industrial hemp seed, paper, clothing, and oils;~~
- ~~(B) Conduct seed research on various types of industrial hemp that are best suited to be grown in Arkansas, including without limitation:~~
- ~~(i) Creation of Arkansas hybrid types of industrial hemp;~~
- ~~(ii) Industrial hemp seed availability; and~~
- ~~(iii) In-the-ground variety trials and seed production;~~
- ~~(C) Establish a program to recognize certain industrial hemp seed as being Arkansas heritage hemp seed;~~
- ~~(D) Study the economic feasibility of developing an industrial hemp market in various types of industrial hemp that can be grown in the state;~~
- ~~(E) Report on the estimated value-added benefits, including environmental benefits, that Arkansas businesses could reap by having an industrial hemp market of Arkansas-grown industrial hemp varieties in the state;~~
- ~~(F) Study the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and utilization;~~
- ~~(G) Research and promote Arkansas industrial hemp and hemp seed on the world market that can be grown on farms in the state; and~~
- ~~(H) Study the feasibility of attracting federal and private funding for the Arkansas industrial hemp research program.~~
- ~~(6) The board may:~~
- ~~(A) Coordinate with the Arkansas Energy Office to study the use of industrial hemp in new energy technologies, including without limitation:~~

- (i) Evaluation of the use of industrial hemp to generate electricity, and to produce biofuels and other forms of energy resources;
- (ii) Growth of industrial hemp on reclaimed mine sites;
- (iii) Use of hemp seed oil in the production of fuels; and
- (iv) Assessment of the production costs, environmental issues, and costs and benefits involved with the use of industrial hemp for energy; and
- (B) Promote awareness of the financial incentives that may be available to agribusiness and manufacturing companies that manufacture industrial hemp into hemp products to:
 - (i) Attract new businesses to the state;
 - (ii) Create a commercial market for industrial hemp;
 - (iii) Create new job opportunities for Arkansas residents; and
 - (iv) Diversify the agricultural economy of the state.
- (7) The research activities under this subchapter shall not:
 - (A)(i) Subject the industrial hemp research program to criminal liability under the controlled substances laws of the state.
 - (ii) The exemption from criminal liability under subdivision (b)(7)(A)(i) of this section is a limited exemption that shall be strictly construed and that shall not apply to an activity of the industrial hemp research program that is not expressly permitted under this subchapter; or
 - (B) Amend or repeal by implication a provision of the Uniform Controlled Substances Act, § 5-64-101 et seq.
- (8) The board shall notify the Department of Arkansas State Police and each local law enforcement agency with jurisdiction of the duration, size, and location of all industrial hemp demonstration plots.
- (9) The board may cooperatively seek funds from both public and private sources to implement the industrial hemp research program created in this subchapter.
- (10) By December 31, 2018, and annually thereafter, the board shall report on the status and progress of the industrial hemp research program to the Governor and to the Arkansas Agriculture Department.
- (11) The board may establish and collect fees to administer the industrial hemp research program.

~~2-15-405. Interagency cooperation.~~

- (a) The Division of Agriculture of the University of Arkansas may provide research and development related services under this subchapter for the State Plant Board, including without limitation:
 - (1) Testing of industrial hemp;
 - (2) Processing of documents relating to the program of licensure;
 - (3) Financial accounting and recordkeeping, and other budgetary functions; and
 - (4) Meeting coordination and staffing.
- (b)(1) The Arkansas Economic Development Commission may work in conjunction with the State Plant Board to promote:
 - (A) The development of industrial hemp production in the state; and
 - (B) The commercialization of hemp products in agribusiness, alternative fuel production, and other business sectors, to the greatest extent possible.
- (2) The commission may promote the availability of financial incentives offered by state government for the processing and manufacture of industrial hemp into hemp products in the state, including without limitation incentives offered to interested parties both within and without this state.
- (c) Administrative expenses under this section shall be paid from the Arkansas Industrial Hemp Program Fund.

~~2-15-406. State Plant Board — Reports.~~

- The State Plant Board may report to the Governor and to the Arkansas Agriculture Department concerning industrial hemp policies and practices that may result in the proper legal growing, management, use, and marketing of the state's potential industrial hemp industry, including without limitation:
- (1) Federal laws and regulatory constraints;
 - (2) The economic and financial feasibility of an industrial hemp market in Arkansas;
 - (3) Arkansas businesses that might use industrial hemp;
 - (4) Examination of research on industrial hemp production and use;
 - (5) The potential for globally marketing Arkansas industrial hemp;

- (6) A feasibility study of private funding for the Arkansas industrial hemp research program;
- (7) Enforcement concerns;
- (8) Statutory and regulatory schemes for growing of industrial hemp by private producers; and
- (9) Technical support and education about industrial hemp.

~~2-15-407. Federal regulations regarding industrial hemp.~~

- (a) ~~The State Plant Board shall adopt the federal rules and regulations that are currently enacted regarding industrial hemp as in effect on January 1, 2017.~~
- (b) ~~This subchapter does not authorize a person to violate any federal rules or regulations.~~
- (c) ~~If any part of this subchapter conflicts with a provision of federal law relating to industrial hemp, the federal provision shall control to the extent of the conflict.~~

~~2-15-408. Industrial hemp licenses.~~

- (a) ~~The State Plant Board may establish a program of annual licensure to allow persons to grow industrial hemp in the state.~~
- (b)(1) ~~The industrial hemp licensure program shall include the following forms of license:~~
 - (A)(i) ~~An industrial hemp research program grower license, to allow a person to grow industrial hemp in this state in a controlled fashion solely and exclusively as part of the industrial hemp research program overseen by the board.~~
 - (ii) ~~A license under subdivision (b)(1)(A)(i) of this section is subject to the receipt of necessary permissions, waivers, or other forms of authentication by the United States Drug Enforcement Administration or another appropriate federal agency pursuant to applicable federal laws relating to industrial hemp; and~~
 - (B)(i) ~~An industrial hemp grower license to allow a person to grow industrial hemp in this state.~~
 - (ii) ~~A license under subdivision (b)(1)(B)(i) of this section is subject to the authorization of legal industrial hemp growth and production in the United States under applicable federal laws relating to industrial hemp.~~
- (2) ~~A license issued under this section shall authorize industrial hemp propagation only on the land areas specified in the license.~~
- (c)(1) ~~A person seeking an application to grow industrial hemp, whether as part of the industrial hemp research program or otherwise, shall apply to the board for the appropriate license on a form provided by the board.~~
- (2) ~~The board shall require the applicant to include on the form provided by the board under subdivision (c)(10) of this section the following information, including without limitation:~~
 - (A)(i) ~~The name and mailing address of the applicant;~~
 - (ii) ~~The legal description and global positioning coordinates of the production fields to be used to grow industrial hemp; and~~
 - (B)(i) ~~Written consent allowing the board, if a license is ultimately issued to the applicant, to enter onto the premises on which the industrial hemp is grown to conduct physical inspections of industrial hemp planted and grown by the applicant to ensure compliance with this subchapter and rules adopted under this subchapter.~~
 - (ii) ~~Unless a deficiency is found, the board shall make no more than two (2) physical inspections of the production fields of an industrial hemp licensee; and~~
 - (iii) ~~Tetrahydrocannabinol levels shall be tested as provided in this subchapter; and~~
- (e) ~~Each application shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00).~~
- (f) ~~The board shall establish a fee not to exceed two hundred (\$200) for an:~~
 - (1) ~~Initial license; and~~
 - (2) ~~Annual renewal license.~~
- (g)(1) ~~For an industrial hemp research program grower licensee, the board may approve licenses for only those growers whose demonstration plots that the board determines will advance the goals of the industrial hemp research program.~~
- (2) ~~The board shall base a determination under subdivision (g)(1) of this section on:~~
 - (A) ~~Growing conditions;~~
 - (B) ~~Location;~~
 - (C) ~~Soil type;~~
 - (D) ~~Various varieties of industrial hemp that may be suitable for various hemp products; and~~

~~(E) Other relevant factors.~~

- ~~(h) The board shall determine the number of acres to be planted under each license.~~
- ~~(i) A copy of or an electronic record of a license issued by the board under this section shall be forwarded immediately to the sheriff of the county in which the industrial hemp location is licensed.~~
- ~~(j) Records, data, and information filed in support of a license application is proprietary and subject to inspection only upon the order of a court of competent jurisdiction.~~
- ~~(k) At the expense of the license holder, the board shall:~~
- ~~(1) Monitor the industrial hemp grown by each license holder;~~
 - ~~(2) Provide for random testing of the industrial hemp for compliance with tetrahydrocannabinol levels; and~~
 - ~~(3) Provide for other oversight required by the board.~~

~~2-15-409. License required—Records.~~

- ~~(a)(1) A person shall obtain an industrial hemp grower license under this subchapter before planting or growing industrial hemp in this state.~~
- ~~(2) An industrial hemp grower license holder who has planted and grown industrial hemp in this state may sell the industrial hemp to a person engaged in agribusiness or other manufacturing for the purpose of research, processing, or manufacturing that industrial hemp into hemp products.~~
- ~~(b) An industrial hemp grower shall:~~
- ~~(1) Maintain records that reflect compliance with this subchapter and all other state laws regulating the planting and cultivation of industrial hemp;~~
 - ~~(2) Retain all industrial hemp production records for at least three (3) years;~~
 - ~~(3) Allow industrial hemp crops, throughout sowing, growing, and harvesting, to be inspected by and at the discretion of the board or its agents;~~
 - ~~(4) File with the board documentation indicating that the industrial hemp seeds planted were of a type and variety certified to have no more tetrahydrocannabinol concentration than that adopted in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.;~~
 - ~~(5) Notify the board of the sale of industrial hemp grown under the license and the names and addresses of the persons to whom the industrial hemp was sold; and~~
 - ~~(6) Provide the board with copies of each contract between the licensee and a person to whom industrial hemp was sold.~~
- ~~(c) A person licensed to grow industrial hemp under this subchapter may import and resell industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.~~

~~2-15-410. Transportation of industrial hemp.~~

- ~~(a)(1) Only an industrial hemp grower licensee or their designees or agents may transport industrial hemp off the premises of the licensee.~~
- ~~(2) When transporting industrial hemp off the premises of an industrial hemp grower licensee, the licensee or a designee or agent of the licensee shall carry the licensing documents from the State Plant Board, evidencing that the industrial hemp:~~
- ~~(A) Was grown by a licensee; and~~
 - ~~(B) Is from certified seed.~~
- ~~(b) Industrial hemp that is found in this state at any location off the premises of an industrial hemp grower licensee is contraband and subject to seizure by any law enforcement officer, unless the person in possession of the industrial hemp has in his or her possession either:~~
- ~~(1) The proper licensing documents under this subchapter; or~~
 - ~~(2) A bill of lading, or other proper documentation, demonstrating that the industrial hemp was legally imported or is otherwise legally present in this state under applicable state and federal laws relating to industrial hemp.~~

~~2-15-411. License revocation.~~

- ~~(a)(1) The State Plant Board shall revoke the license of an industrial hemp grower licensee who fails to comply with this subchapter or the rules adopted under this subchapter.~~
- ~~(2) An industrial hemp grower licensee whose license is revoked under subdivision (a)(1) of this section is ineligible for licensure under this subchapter for up to five (5) years after the revocation.~~

~~(b)(1) Before revocation of an industrial hemp grower license, the board shall provide the industrial hemp grower licensee notice and an informal hearing before the board to show cause why the license should not be revoked and the licensee's right to grow forfeited.~~

~~(2) If a license is revoked and a licensee's right to grow is forfeited as the result of an informal hearing under subdivision (b)(1) of 12 this section, the industrial hemp grower licensee may request a formal administrative hearing before the board.~~

~~(c) An industrial hemp grower licensee whose license is revoked may appeal the final order of the board by filing an appeal in the circuit court of the district in which the licensee resides.~~

~~2-15-412. Grant funds.~~

~~(a) An industrial hemp grower licensed under this subchapter may receive funds received by the state under the Arkansas Industrial Hemp Fund.~~

~~(b) The State Plant Board shall adopt rules for applications for grants under this section.~~

~~SECTION 2. Arkansas Code § 19-6-301, concerning special revenues enumerated, is amended to add an additional subdivision to read as follows:~~

~~(255) Permit fees paid under the Arkansas Industrial Hemp Act, § 2-15-401 et seq.~~

~~SECTION 3. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended to add an additional section to read as follows:~~

~~19-6-833. Arkansas Industrial Hemp Program Fund.~~

~~(a) There is established on the books of the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Arkansas Industrial Hemp Program Fund".~~

~~(b) The fund shall consist of:~~

~~(1) Fees collected under the Arkansas Industrial Hemp Act, § 2-15-401 et seq.;~~

~~(2) Gifts, grants, and other funds both public and private; and~~

~~(3) Other revenues as may be authorized by law.~~

~~(c) Any unallocated or unencumbered balances in the fund shall be invested in the fund and any interest or other income earned from the investments, along with the unallotted or unencumbered balances in the fund, shall not lapse but shall be carried forward for purposes of the fund, and made available solely for the purposes and benefits of the industrial hemp research program under the Arkansas Industrial Hemp Act, § 2-15-401 et seq.~~

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Agriculture/Plant Board

DIVISION Plant Industries

DIVISION DIRECTOR Scott Bray

CONTACT PERSON Wade Hodge

ADDRESS #1 Natural Resources Drive, Little Rock AR 72205

PHONE NO. 501-219-6361 **FAX NO.** _____

E-MAIL wade.hodge@agriculture.arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Scott Bray

PRESENTER E-MAIL scott.bray@agriculture.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.**
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.**
- C. If you have a method of indexing your rules, please give the proposed citation after “Short Title of this Rule” below.**
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:**

Jessica C. Whittaker
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

- 1. What is the short title of this rule? Arkansas Industrial Hemp Production Rule

- 2. What is the subject of the proposed rule? To implement the provisions of Act 565 of 2021, The Arkansas Industrial Hemp Production Act, and to repeal the current hemp rule.

- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No x _____
If yes, please provide the federal rule, regulation, and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No x _____
If yes, what is the effective date of the emergency rule? _____
When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule. See attached summary.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does.**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 2-15-505, 507, 512, 515, 516

7. What is the purpose of this proposed rule? Why is it necessary? See attached summary

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.agriculture.arkansas.gov

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: April 14, 2022

Time: 9:30

Place: 1 Natural Resources Drive, Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

Written comments will be accepted through April 10. However, oral comments will be accepted on April 14, 2022.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

June 1, 2022

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Agriculture/Plant Board
DIVISION Plant Industries
PERSON COMPLETING THIS STATEMENT Wade Hodge
TELEPHONE NO. 501-219-6361 **FAX NO.** _____
EMAIL: wade.hodge@agriculture.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Arkansas Industrial Hemp Production Rule

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No ✓ _____
There should be no financial impact because previous law and current rule provide for fees to administer the program, and current law and the proposed rule also provide for fees to administer the program.
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes _____ X _____ No _____
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X _____ No _____

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;
- (b) The reason for adoption of the more costly rule;
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____

Next Fiscal Year

General Revenue _____

Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. N/A

Current Fiscal Year

Next Fiscal Year

\$ _ _

\$ _ _ _ _ _

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _ N/A _____

\$ _ N/A _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No _____

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

MARK-UP

ARKANSAS INDUSTRIAL HEMP PRODUCTION RULE

SECTION 1. AUTHORITY

These rules are promulgated by the Arkansas State Plant Board pursuant to the Arkansas Industrial Hemp Production Act, Ark. Code Ann. § 2-15-501 et seq.

SECTION 2. SCOPE

These rules govern the oversight of industrial hemp production in Arkansas, including but not limited to the growing, processing, handling, storage, sale, transfer, importation, and distribution of industrial hemp.

SECTION 3. DEFINITIONS

As used in these rules:

- (1) “Acceptable hemp THC level” means the application of the Measurement of Uncertainty to the reported (decarboxylated) delta-9-THC concentration level on a dry-weight basis produces a distribution range that includes 0.3 percent or less.
- (2) “Act” means the Arkansas Industrial Hemp Production Act, A.C.A. § 2-15-501 et seq.
- (3) “Approved variety” means any variety (‘variety’ may also be referred to as ‘cultivar’) of industrial hemp approved by the Department in a published “Summary of Varieties List” that may be amended from time to time.
- (4) “Board” means the Arkansas State Plant Board.
- (5) “Cannabis” means the plant that, depending on its THC concentration level, is defined as either “hemp” or “marijuana.” Cannabis is a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis ruderalis* are subspecies thereof. Cannabis includes all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts.
- (6) “Corrective Action Plan” is a document set forth by the Department for a licensee to correct a negligent violation of, or noncompliance with, A.C.A. § 2-15-501 et seq. or any rule promulgated under the authority of this statute.
- (7) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
- (8) “delta-9-THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation (otherwise known as “Total THC”).
- (9) “Department” means the Arkansas Department of Agriculture.
- (10) “Endorsement” means the authorization to engage in a certain activity under a hemp license. Hemp licensing endorsements are specifically denoted on the hemp license,

relating to one or more of the following types of authorized hemp operations: (1) growth and production, (2) processing, (3) handling, (4) storage only, or (5) research only.

- (11) “GPS” means Global Positioning System.
- (12) “Handling” means possessing or storing industrial hemp for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process industrial hemp. Handling also includes possessing or storing industrial hemp in a vehicle for any period of time, other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person.
- (13) “Harvesting” means the process of cutting or collecting industrial hemp crop or crop parts grown in a plot, field, greenhouse, or indoor growing structure.
- (14) “Hemp” or “industrial hemp” is defined by A.C.A. § 2-15-503(5).
- (15) “Hemp License” means a license issued pursuant to the Act and these rules, including all endorsements issued thereunder.
- (16) “Key participant” means any person who has direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. “Key participants” include, without limitation, an entity’s chief executive officer, chief operating officer, and chief financial officer. “Key participants” does not include farm managers, field managers, or shift managers.
- (17) “Licensed grower” means person licensed to grow, handle, store and market hemp under the terms established in a hemp license, A.C.A. § 2-15-501 et seq., and these rules.
- (18) “Licensed processor” means an individual or business entity possessing a hemp license issued by the Department that is authorized in Arkansas to process, handle, store and market hemp under the terms established in a hemp license, A.C.A. § 2-15-501 et seq., and these rules.
- (19) “Location ID” means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (20) “Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements set forth in this rule, A.C.A. § 2-15-501 et seq.
- (21) “Nonviable seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (22) “Post-harvest sample” means a sample taken from the harvest hemp from a particular lot’s harvest in accordance with the sampling procedures established annually by the Department under the authority of A.C.A. § 2-15-509(e). The entire lot’s harvest is in the same form (for example, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another lot.
- (23) “Pre-harvest sample” means a composite, representative portion from living plants in a hemp lot collected in accordance with the sampling procedures established annually by the Department under the authority of A.C.A. § 2-15-509(e).
- (24) “Processing” means converting hemp into a hemp product.
- (25) “Prohibited variety” means a variety or strain of cannabis not authorized for use in Arkansas.
- (26) “Propagule” means a plant or plant part that can be utilized to grow a new plant.

- (27) “Signing authority” means an officer or agent of the organization with the written power to commit the legal entity to a binding contract.
- (28) “Strain” means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.
- (29) “Tetrahydrocannabinol” means the natural or synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of *Cannabis sativa*, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.
- (30) “Variety” means a subdivision of a species that is:
 - (A) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
 - (B) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
 - (C) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.
- (31) “Variety of Concern” means any variety of hemp or cannabis that tests above 0.300% in one (1) or more pre-harvest samples. A hemp variety designated as a ‘variety of concern’ could be subject to restrictions and additional testing.
- (32) “Volunteer cannabis plant” means any cannabis plant that:
 - (A) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and
 - (B) Is not planted intentionally.

SECTION 4. LICENSING

- (a) No person shall grow, produce, process, handle, sell or transfer, permit the sale or transfer, or store hemp without a license issued under these rules and containing the appropriate endorsements.
- (b) Any person who wishes to obtain or renew a hemp license shall submit a completed application to the Department.
- (c) An applicant shall indicate the license endorsements sought in the new license or renewal application.
- (d) All hemp licenses shall expire on December 31 unless renewed.
- (e) All renewal applications and any other renewal requirements established by Department policy must be submitted to the Department by December 1 of each year.
- (f) No person under the age of eighteen (18) years of age shall apply for or be granted a hemp license.
- (g) The Department shall not review any application that is incomplete or is not accompanied by the required fees.
- (h) An applicant may apply for one or more endorsements, which upon approval of the application will be clearly marked on the issued license and shall authorize the person to engage in the specified activity.

- (i) The applicant's principal place of business shall be located in Arkansas or within fifty (50) miles of at least one of the applicant's Arkansas growing sites.
- (j) The applicant shall affirm that the applicant or his or her representative shall be present at any licensed site within twenty-four (24) hours' notice at the request of the Department or any law enforcement agency.
- (k) No person who has been convicted of a felony related to a controlled substance in the previous ten (10) years from the date of the conviction shall be eligible to obtain a license unless otherwise provided by federal or state law.
- (l) The applicant shall not be delinquent in making any required reports or payments to the Department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the Department.
- (m) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the Department.

SECTION 5. APPLICATION CONTENTS

Hemp license and renewal applications shall contain at a minimum:

- (1) For individuals: the individual's full name, residential address, telephone number, and e-mail address;
- (2) For persons other than individuals: the entity's name, Employer Identification Number (EIN), business location address in Arkansas, principal business location, and entity's key participants, including his or her full name, title within the entity, business address, telephone number, and e-mail address; and
- (3) For each signing authority: his or her full name, business title, business address, telephone number, and e-mail address;
- (4) The proposed acreage or greenhouse or indoor square footage to be planted;
- (5) Street address; Location ID; legal land description, and GPS Coordinates for each field, greenhouse, building, or site where hemp will be grown, processed, handled, or stored;
- (6) Aerial maps depicting each site where hemp will be grown, processed, handled or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and
- (7) Applicant's consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;
- (8) Applicant's consent to forfeiture and destruction, without compensation, of:
 - (A) Material found to have a measured delta-9-THC content in excess of zero and three tenths (0.3) percent on a dry weight basis;
 - (B) Plants located in an area that is not licensed by the Department; and
 - (C) Plants not accounted for in required reporting to the Department.

SECTION 6. NATIONAL CRIMINAL HISTORY BACKGROUND CHECK

- (a) All licensees, applicants, and key participants shall complete and pay for fingerprinting and an annual national criminal history background check as required by A.C.A. § 2-15-513.

- (b) All licensees, applicants, and key participants shall, following the completion of the fingerprinting and criminal history background check, ensure delivery of the report to the Department with each completed application.
- (c) The Department shall not accept a report from a criminal history background check that occurred more than sixty (60) days prior to the date of application or renewal.
- (d) Failure to submit a criminal history background check with the application or renewal shall be grounds for denial of a licensure or renewal application.
- (e) Substitution of a signing authority shall require approval from the Department and completion of a national criminal history background check on the new signing authority.
- (f) The applicant shall sign a release that allows the department to disclose:
 - (1) An Arkansas noncriminal-justice background check to the State Plant Board as evidence in an administrative hearing conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and
 - (2) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

SECTION 7. LAND USE RESTRICTIONS FOR HEMP LICENSEES

A licensee shall not:

- (a) Plant or grow cannabis other than hemp in a hemp lot or Location ID listed in a license.
- (b) Plant or grow any hemp or other cannabis purported to be hemp at a site or facility not approved by the Department.
- (c) Grow, process, or store hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the Department.
- (d) Handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.
- (e) Grow, process, handle, or store hemp or other cannabis at any site that is located within 1,000 feet of a public area frequented by children.
- (f) Include any property on an application or Site Modification Request to grow, cultivate or store hemp that is not owned or completely controlled by the applicant or licensee, as evidenced by a written lease or other document that shall be provided to the Department upon request.
- (g) Allow unsupervised public access to any site where hemp is grown, processed, handled, or stored.
- (h) Grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or public recreational area.
- (i) Grow, handle, process, or store hemp or other cannabis on property owned by, or leased from a person that:
 - (1) Was denied a license within the last five (5) years;
 - (2) Possesses a hemp license in suspended or revoked status;
 - (3) Fails to obtain a criminal history background check or is ineligible to grow industrial hemp due to a previous criminal conviction; or
 - (4) Fails to comply with a valid order from a representative of the Department or law enforcement.

A licensee shall:

- (a) Physically segregate hemp from other crops unless prior approval is obtained in writing from the Department.
- (b) Plant a minimum of 100 plants in each growing site unless prior approval is received in writing from the Department.
- (c) Plant a minimum of one quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the Department.
- (d) Post signage at all outdoor plot locations. The signage shall include the following information:
 - (1) The statement, “Arkansas Department of Agriculture Hemp Licensing Program”;
 - (2) License holder’s name;
 - (3) License holder’s license number;
 - (4) The Location ID name of the plot; and
 - (5) Telephone number for the licensee point of contact and the Department.
- (e) (1) Ensure the monitoring and destruction of volunteer plants for three years following cultivation regardless of land lease or ownership status during that period.
(2) It shall be the responsibility of the licensee to monitor and destroy volunteers, however, such responsibility may be transferred or assigned to another entity by written mutual agreement.

SECTION 8. FEES

- (a) Nonrefundable Annual Application Fees
 - (1) \$100 for new applicants
 - (2) No application fee shall be charged to renewing applicants if all Production Reports are submitted to the Department and FSA by December 1 annually.
 - (3) \$100 for renewing applicants, if Production Report not received by the Department by December 1st annually
- (b) Annual Hemp Licensing Fees -- \$300 per License
 - (1) Annual Grower Fees:
 - (A) \$10 per acre requested for licensure
 - (B) \$100 per Greenhouse/Indoor and Storage Location ID
 - (2) Annual Processor/Handler Fees:
 - (A) \$1,500 for floral processing
 - (B) \$500 for fiber or grain/seed processing
 - (C) \$500 for handling hemp material
 - (3) Site Modification Fee -- \$200 per modification request
- (c) Sampling/Testing Fees – \$100 per compliance sample
- (d) Institutions of higher education conducting hemp production research operations are not subject to any fees under these rules.

SECTION 9. SITE MODIFICATION

- (a) A hemp licensee who elects for a new growing, processing, handling, or storage location at a site other than the sites specified by the GPS coordinates listed on the hemp license, shall submit

- a Site Modification Request, and obtain written approval from a representative of the Department, prior to the planting, growing, processing, or storing at the proposed location.
- (b) Any request for a new growing location shall comply with this rule.
- (c) The Department shall charge a site modification fee for each new Location ID. Site modifications shall not be approved before payment of the site modification fee.
- (d) Storage-only locations and institutions of higher education are not subject to site modification fees.

SECTION 10. SEED AND SEEDLING/PROPAGULE ACQUISITION

- (a) A licensee intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the Department's current Summary of Varieties List.
 - (1) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the Department is necessary.
 - (2) The Department's Summary of Varieties List may also designate whether a variety is considered to be a Variety of Concern or Prohibited Variety.
 - (3) If the variety or strain is not listed on the Summary of Varieties List, the licensee shall submit a New Hemp Variety Form or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral delta-9-THC (must be measured post-decarboxylation, also referred to as Total THC) content of not more than the acceptable hemp THC level on a dry weight basis from an independent third-party laboratory.
- (b) A licensee who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request Form, prior to its use in crop production.
- (c) The Department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.
- (d) The Department shall not approve a New Hemp Variety or Strain Request if a representative of the Department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (must be measured post-decarboxylation, also referred to as Total THC) content of more than the acceptable hemp THC level on a dry weight basis.
- (e) A licensee shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the Department's published Summary of Varieties List.
- (f) Upon request from a representative of the Department, a licensee shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.
- (g) Any person engaging in the distribution of viable hemp seeds shall adhere to applicable Arkansas Seed Laws and any rules promulgated thereunder.
- (h) Any person who intends to move transplants or other living plants to a location outside of Arkansas must obtain either:
 - (1) A Nurseryman's License issued by the Department; or
 - (2) A phytosanitary certificate issued by the Department.

SECTION 11. SEEDS OF WILD, LANDRACE, OR UNKNOWN ORIGIN

- (a) No person shall acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the Department.
- (b) The Department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the Department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the Department or its designee.
- (c) Any licensee found to have saved seed, propagules or cuttings, or cultivated seeds, propagules or cuttings from a cannabis plant of wild, landrace, or unknown origin without advanced written permission from the Department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

SECTION 12. CROP ACREAGE REPORTS TO FARM SERVICE AGENCY (FSA)

- (a) Within fifteen days of each lot planting and prior to the submission of Department planting reports, a licensed grower shall report hemp crop acreage to FSA, including at a minimum the following information:
 - (1) Street address and, to the extent practicable, GPS coordinates for each field or greenhouse where hemp will be produced;
 - (2) Acreage (or square footage, in the case of a greenhouse or other indoor growing facility production) dedicated to the growing of each planted lot of hemp, including each lot's full variety name; and
 - (3) The grower's name and license number.
- (b) Licensees shall provide copies of FSA reports to the Department upon request.
- (c) Licensees shall provide the Department upon request with any additional planting or growing information that is reasonably related to monitoring licensee hemp operations or for statistical purposes.
- (d) Licensees shall provide the Department with FSA Lot Numbers for each planted lot of hemp to be included on the Department's associated planting report forms.

SECTION 13. PLANTING REPORTS FOR OUTDOOR PLANTINGS

- (a) A licensed grower shall submit to the Department a complete and current Field Planting Report within fifteen (15) days after every planting, including replanted lots of seeds or propagules in an outdoor location, after first obtaining FSA Lot Numbers for each planted lot.
- (b) Each Field Planting Report shall identify the:
 - (1) Correct variety or strain's full name;
 - (2) Address and Field Location ID as listed on the hemp license;
 - (3) Lot number provided by the FSA office; and
 - (4) Amount planted and the primary intended use of the harvest.
- (c) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp license shall submit a Field Planting Report on or before July 31st of each calendar year, stating that hemp has not been planted and will not be planted at that site.

SECTION 14. PLANTING REPORTS FOR INDOOR/GREENHOUSE PLANTINGS

- (a) A licensed grower shall submit to the Department a complete and current Greenhouse/Indoor Planting Report Form within fifteen (15) days after establishing plants at an indoor location.
- (b) Each Greenhouse/Indoor Planting Report Form shall identify the:
 - (1) Correct variety or strain name's full name;
 - (2) Address and Greenhouse or indoor growing location ID as listed in the hemp license;
 - (3) Lot number provided by the FSA Office, if applicable; and
 - (4) Amount planted and the primary intended use of the harvest or of the hemp plants.
- (c) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the Department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

SECTION 15. SITE ACCESS

- (a) Licensees shall permit a representative of the Department or law enforcement agency to enter the premises where hemp or other cannabis seeds, plants, or material are located, and any premises listed in the hemp license, for any lawful purpose and with or without advance notice.
- (b) An applicant or hemp licensee shall obtain in writing from the owner of any leased or rented field or structure the owner's acknowledgement that both licensee and owner will abide by these rules and the Act using.

SECTION 16. HARVESTING

- (a) The Department may inspect a hemp licensee's premises or collect samples of any hemp or other cannabis material at any time.
- (b) The grower shall not harvest hemp plants from a lot without the Department first collecting samples from that lot.
- (c) Fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the Department a completed harvest request form identifying the intended date of harvest (or date of destruction in the case of a failed crop).
- (d) During the Department's scheduled sample collection, the grower or an authorized representative of the grower shall be present at the growing site.
- (e) Representatives of the Department shall be provided with complete and unrestricted access 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 hemp license.
- (f) The hemp licensee shall harvest the crop not more than thirty (30) days following the date of sample collection by the Department, unless specifically authorized in writing by the Department.
- (g) If the hemp licensee fails to complete a harvest within thirty (30) days following the date of sample collection, grower shall submit a new harvest request and additional pre-harvest sample fee prior to harvesting.
- (h) Hemp floral material shall not be moved outside Arkansas, nor out of the possession of a licensee, nor commingled or extracted, until the Department certifies that the subject hemp is compliant.

- (i) Harvested materials from one lot shall not be commingled with other harvested lots unless all harvested lots are certified as compliant by the Department.

SECTION 17. IMPORTATION OF HEMP MATERIAL INTO ARKANSAS

- (a) No person shall import hemp into the state of Arkansas without a hemp license issued pursuant to these rules.
- (b) All imported hemp shall comply with this rule, the Act, and all applicable state and federal laws.
- (c) Nothing in this rule shall be construed as to prohibit the transportation or shipment of hemp lawfully produced under a federal, state, or tribal plan approved by the United States Department of Agriculture, through the state of Arkansas and where the state of Arkansas is not the final destination for the transported hemp.

SECTION 18. PROHIBITED ACTIVITIES

- (a) No person shall violate any provision of this rule, the Act, or any other federal or state law, rule, or order while engaging in the activities governed by this rule or the Act.
- (b) A hemp licensee shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf materials, or floral materials to any unlicensed person in Arkansas.
- (c) A licensee shall not grow, process, sell or transfer, or permit the sale or transfer of substances listed or described in the schedules of controlled substances in the Arkansas Uniform Controlled Substances Act or the United States Controlled Substances Act.
- (d) No person shall knowingly, intentionally, recklessly, or negligently sell, offer to sell, allow the sale, or otherwise distribute industrial hemp to a person or persons engaged in the illegal manufacture of substances listed or described in the schedules of controlled substances in the Arkansas Uniform Controlled Substances Act, Ark. Code Ann. § 5-64-101 et seq., or the United States Controlled Substances Act, 21 U.S.C. § 812 et seq.
- (e) A hemp licensee shall not provide false, misleading, or incorrect information to the Department pertaining to the licensee's cultivation, processing, or transportation of hemp, including without limitation any information provided within any application, report, record, or inspection required or maintained in accordance with these rules and the Act.
- (f) A hemp licensee selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including cannabidiol), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.
- (g) A hemp licensee shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration greater than zero and three-tenths (0.3) percent.
- (h) Hemp licensees shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.
- (i) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.
- (j) A hemp licensee shall not allow another person, other than an agent of the licensed grower, to grow, handle, process, or store hemp under their license in lieu of obtaining a separate hemp license.

- (k) A hemp licensee shall not detach, alter, deface or destroy any labeling or other required documentation specified in these rules, or alter or substitute seed or transplants in a manner that may defeat the purpose of these rules.
- (l) A hemp licensee shall not hinder or obstruct in any way any authorized representatives of the Department or any law enforcement agency in the performance of his or her duties.
- (m) A hemp licensee shall not commingle harvested hemp or other cannabis material from one lot with harvested material from another lot unless all lots have been certified compliant by the Department.
- (n) A licensee shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in Arkansas who does not hold a hemp license.

SECTION 19. ENFORCEMENT ACTIONS

- (a) Any person that violates the Act or these rules shall be subject to one or more of the following:
 - (1) Civil penalties up to \$5,000 per violation;
 - (2) Corrective Action Plan;
 - (3) Issuance of a stop order;
 - (4) License suspension; or
 - (5) License revocation.
- (b) Any licensee that commits three (3) negligent violations within a 5-year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to the effective date of the Act shall not be counted.
- (c) In instances where a licensee commits a violation with a culpable mental state greater than negligence, the board may initiate revocation or suspension proceedings against the licensee and shall immediately report the licensee to the Arkansas Office of the Attorney General and all appropriate law enforcement agencies.

SECTION 20. HEARINGS AND APPEALS

- (a) All hearings and appeals shall be conducted in accordance with the Arkansas Administrative Procedure Act, Ark. Code Ann. §25-15-201 et seq., except that:
 - (1) Before revocation of a grower's license, the board shall provide the grower notice and an informal hearing to show cause why the license should not be revoked and the grower's right to grow forfeited.
 - (2) If a license is revoked and a grower's right to grow is forfeited as the result of an informal hearing under subdivision (b)(1) of this section, the grower may request a formal administrative hearing before the board or a committee of the board, as provided in board rules.
- (b) A person wishing to appeal a final action of the Board shall submit a written request for a hearing to the Department within thirty (30) days of notice.

SECTION 21. RECORDKEEPING

- (a) For at least three (3) years, hemp licensees shall keep and make available for inspection by the Department the following records:
 - (1) Records regarding acquisition of hemp plants;
 - (2) Records regarding production, processing, and handling of hemp plants;
 - (3) Records regarding storage of hemp plants;
 - (4) Records regarding disposal of all hemp plants; and
 - (5) Records regarding the disposal of all cannabis plants that do not meet the definition of hemp.
- (b) The Department and any law enforcement agency shall have access to any premises where industrial hemp, or cannabis plants purported to be industrial hemp, may be held during normal business hours.

SECTION 22. CORRECTIVE ACTION PLANS FOR NEGLIGENT VIOLATIONS

- (a) If the Department determines that a licensee committed a negligent violation of any provision within A.C.A. § 2-15-501 *et seq.*, or any rule promulgated under the authority of the Arkansas Hemp Production Act, then the Department may issue a corrective action plan for the grower.
- (b) Corrective action plans will remain in place for at least two (2) years and include, at a minimum, the following:
 - (1) The date by which the grower shall correct each negligent violation;
 - (2) Steps to correct each negligent violation; and
 - (3) A description of the procedures to demonstrate compliance.

CLEAN COPY

ARKANSAS INDUSTRIAL HEMP PRODUCTION RULE

SECTION 1. AUTHORITY

These rules are promulgated by the Arkansas State Plant Board pursuant to the Arkansas Industrial Hemp Production Act, Ark. Code Ann. § 2-15-501 et seq.

SECTION 2. SCOPE

These rules govern the oversight of industrial hemp production in Arkansas, including but not limited to the growing, processing, handling, storage, sale, transfer, importation, and distribution of industrial hemp.

SECTION 3. DEFINITIONS

As used in these rules:

- (1) “Acceptable hemp THC level” means the application of the Measurement of Uncertainty to the reported (decarboxylated) delta-9-THC concentration level on a dry-weight basis produces a distribution range that includes 0.3 percent or less.
- (2) “Act” means the Arkansas Industrial Hemp Production Act, A.C.A. § 2-15-501 *et seq.*
- (3) “Approved variety” means any variety (‘variety’ may also be referred to as ‘cultivar’) of industrial hemp approved by the Department in a published “Summary of Varieties List” that may be amended from time to time.
- (4) “Board” means the Arkansas State Plant Board.
- (5) “Cannabis” means the plant that, depending on its THC concentration level, is defined as either “hemp” or “marijuana.” Cannabis is a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis ruderalis* are subspecies thereof. Cannabis includes all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts.
- (6) “Corrective Action Plan” is a document set forth by the Department for a licensee to correct a negligent violation of, or noncompliance with, A.C.A. § 2-15-501 *et seq.* or any rule promulgated under the authority of this statute.
- (7) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
- (8) “delta-9-THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation (otherwise known as “Total THC”).
- (9) “Department” means the Arkansas Department of Agriculture.
- (10) “Endorsement” means the authorization to engage in a certain activity under a hemp license. Hemp licensing endorsements are specifically denoted on the hemp license,

relating to one or more of the following types of authorized hemp operations: (1) growth and production, (2) processing, (3) handling, (4) storage only, or (5) research only.

- (11) "GPS" means Global Positioning System.
- (12) "Handling" means possessing or storing industrial hemp for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process industrial hemp. Handling also includes possessing or storing industrial hemp in a vehicle for any period of time, other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person.
- (13) "Harvesting" means the process of cutting or collecting industrial hemp crop or crop parts grown in a plot, field, greenhouse, or indoor growing structure.
- (14) "Hemp" or "industrial hemp" is defined by A.C.A. § 2-15-503(5).
- (15) "Hemp License" means a license issued pursuant to the Act and these rules, including all endorsements issued thereunder.
- (16) "Key participant" means any person who has direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. "Key participants" include, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer. "Key participants" does not include farm managers, field managers, or shift managers.
- (17) "Licensed grower" means person licensed to grow, handle, store and market hemp under the terms established in a hemp license, A.C.A. § 2-15-501 et seq., and these rules.
- (18) "Licensed processor" means an individual or business entity possessing a hemp license issued by the Department that is authorized in Arkansas to process, handle, store and market hemp under the terms established in a hemp license, A.C.A. § 2-15-501 et seq., and these rules.
- (19) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (20) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements set forth in this rule, A.C.A. § 2-15-501 et seq.
- (21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (22) "Post-harvest sample" means a sample taken from the harvest hemp from a particular lot's harvest in accordance with the sampling procedures established annually by the Department under the authority of A.C.A. § 2-15-509(e). The entire lot's harvest is in the same form (for example, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another lot.
- (23) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the sampling procedures established annually by the Department under the authority of A.C.A. § 2-15-509(e).
- (24) "Processing" means converting hemp into a hemp product.
- (25) "Prohibited variety" means a variety or strain of cannabis not authorized for use in Arkansas.
- (26) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

- (27) “Signing authority” means an officer or agent of the organization with the written power to commit the legal entity to a binding contract.
- (28) “Strain” means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.
- (29) “Tetrahydrocannabinol” means the natural or synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of *Cannabis sativa*, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.
- (30) “Variety” means a subdivision of a species that is:
 - (A) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
 - (B) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
 - (C) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.
- (31) “Variety of Concern” means any variety of hemp or cannabis that tests above 0.300% in one (1) or more pre-harvest samples. A hemp variety designated as a ‘variety of concern’ could be subject to restrictions and additional testing.
- (32) “Volunteer cannabis plant” means any cannabis plant that:
 - (A) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and
 - (B) Is not planted intentionally.

SECTION 4. LICENSING

- (a) No person shall grow, produce, process, handle, sell or transfer, permit the sale or transfer, or store hemp without a license issued under these rules and containing the appropriate endorsements.
- (b) Any person who wishes to obtain or renew a hemp license shall submit a completed application to the Department.
- (c) An applicant shall indicate the license endorsements sought in the new license or renewal application.
- (d) All hemp licenses shall expire on December 31 unless renewed.
- (e) All renewal applications and any other renewal requirements established by Department policy must be submitted to the Department by December 1 of each year.
- (f) No person under the age of eighteen (18) years of age shall apply for or be granted a hemp license.
- (g) The Department shall not review any application that is incomplete or is not accompanied by the required fees.
- (h) An applicant may apply for one or more endorsements, which upon approval of the application will be clearly marked on the issued license and shall authorize the person to engage in the specified activity.

- (i) The applicant's principal place of business shall be located in Arkansas or within fifty (50) miles of at least one of the applicant's Arkansas growing sites.
- (j) The applicant shall affirm that the applicant or his or her representative shall be present at any licensed site within twenty-four (24) hours' notice at the request of the Department or any law enforcement agency.
- (k) No person who has been convicted of a felony related to a controlled substance in the previous ten (10) years from the date of the conviction shall be eligible to obtain a license unless otherwise provided by federal or state law.
- (l) The applicant shall not be delinquent in making any required reports or payments to the Department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the Department.
- (m) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the Department.

SECTION 5. APPLICATION CONTENTS

Hemp license and renewal applications shall contain at a minimum:

- (1) For individuals: the individual's full name, residential address, telephone number, and e-mail address;
- (2) For persons other than individuals: the entity's name, Employer Identification Number (EIN), business location address in Arkansas, principal business location, and entity's key participants, including his or her full name, title within the entity, business address, telephone number, and e-mail address; and
- (3) For each signing authority: his or her full name, business title, business address, telephone number, and e-mail address;
- (4) The proposed acreage or greenhouse or indoor square footage to be planted;
- (5) Street address; Location ID; legal land description, and GPS Coordinates for each field, greenhouse, building, or site where hemp will be grown, processed, handled, or stored;
- (6) Aerial maps depicting each site where hemp will be grown, processed, handled or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and
- (7) Applicant's consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;
- (8) Applicant's consent to forfeiture and destruction, without compensation, of:
 - (A) Material found to have a measured delta-9-THC content in excess of zero and three tenths (0.3) percent on a dry weight basis;
 - (B) Plants located in an area that is not licensed by the Department; and
 - (C) Plants not accounted for in required reporting to the Department.

SECTION 6. NATIONAL CRIMINAL HISTORY BACKGROUND CHECK

- (a) All licensees, applicants, and key participants shall complete and pay for fingerprinting and an annual national criminal history background check as required by A.C.A. § 2-15-513.

- (b) All licensees, applicants, and key participants shall, following the completion of the fingerprinting and criminal history background check, ensure delivery of the report to the Department with each completed application.
- (c) The Department shall not accept a report from a criminal history background check that occurred more than sixty (60) days prior to the date of application or renewal.
- (d) Failure to submit a criminal history background check with the application or renewal shall be grounds for denial of a licensure or renewal application.
- (e) Substitution of a signing authority shall require approval from the Department and completion of a national criminal history background check on the new signing authority.
- (f) The applicant shall sign a release that allows the department to disclose:
 - (1) An Arkansas noncriminal-justice background check to the State Plant Board as evidence in an administrative hearing conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and
 - (2) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

SECTION 7. LAND USE RESTRICTIONS FOR HEMP LICENSEES

A licensee shall not:

- (a) Plant or grow cannabis other than hemp in a hemp lot or Location ID listed in a license.
- (b) Plant or grow any hemp or other cannabis purported to be hemp at a site or facility not approved by the Department.
- (c) Grow, process, or store hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the Department.
- (d) Handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.
- (e) Grow, process, handle, or store hemp or other cannabis at any site that is located within 1,000 feet of a public area frequented by children.
- (f) Include any property on an application or Site Modification Request to grow, cultivate or store hemp that is not owned or completely controlled by the applicant or licensee, as evidenced by a written lease or other document that shall be provided to the Department upon request.
- (g) Allow unsupervised public access to any site where hemp is grown, processed, handled, or stored.
- (h) Grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or public recreational area.
- (i) Grow, handle, process, or store hemp or other cannabis on property owned by, or leased from a person that:
 - (1) Was denied a license within the last five (5) years;
 - (2) Possesses a hemp license in suspended or revoked status;
 - (3) Fails to obtain a criminal history background check or is ineligible to grow industrial hemp due to a previous criminal conviction; or
 - (4) Fails to comply with a valid order from a representative of the Department or law enforcement.

A licensee shall:

- (a) Physically segregate hemp from other crops unless prior approval is obtained in writing from the Department.
- (b) Plant a minimum of 100 plants in each growing site unless prior approval is received in writing from the Department.
- (c) Plant a minimum of one quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the Department.
- (d) Post signage at all outdoor plot locations. The signage shall include the following information:
 - (1) The statement, “Arkansas Department of Agriculture Hemp Licensing Program”;
 - (2) License holder’s name;
 - (3) License holder’s license number;
 - (4) The Location ID name of the plot; and
 - (5) Telephone number for the licensee point of contact and the Department.
- (e) (1) Ensure the monitoring and destruction of volunteer plants for three years following cultivation regardless of land lease or ownership status during that period.
(2) It shall be the responsibility of the licensee to monitor and destroy volunteers, however, such responsibility may be transferred or assigned to another entity by written mutual agreement.

SECTION 8. FEES

- (a) Nonrefundable Annual Application Fees
 - (1) \$100 for new applicants
 - (2) No application fee shall be charged to renewing applicants if all Production Reports are submitted to the Department and FSA by December 1 annually.
 - (3) \$100 for renewing applicants, if Production Report not received by the Department by December 1st annually
- (b) Annual Hemp Licensing Fees -- \$300 per License
 - (1) Annual Grower Fees:
 - (A) \$10 per acre requested for licensure
 - (B) \$100 per Greenhouse/Indoor and Storage Location ID
 - (2) Annual Processor/Handler Fees:
 - (A) \$1,500 for floral processing
 - (B) \$500 for fiber or grain/seed processing
 - (C) \$500 for handling hemp material
 - (3) Site Modification Fee -- \$200 per modification request
- (c) Sampling/Testing Fees – \$100 per compliance sample
- (d) Institutions of higher education conducting hemp production research operations are not subject to any fees under these rules.

SECTION 9. SITE MODIFICATION

- (a) A hemp licensee who elects for a new growing, processing, handling, or storage location at a site other than the sites specified by the GPS coordinates listed on the hemp license, shall submit

- a Site Modification Request, and obtain written approval from a representative of the Department, prior to the planting, growing, processing, or storing at the proposed location.
- (b) Any request for a new growing location shall comply with this rule.
- (c) The Department shall charge a site modification fee for each new Location ID. Site modifications shall not be approved before payment of the site modification fee.
- (d) Storage-only locations and institutions of higher education are not subject to site modification fees.

SECTION 10. SEED AND SEEDLING/PROPAGULE ACQUISITION

- (a) A licensee intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the Department’s current Summary of Varieties List.
 - (1) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the Department is necessary.
 - (2) The Department’s Summary of Varieties List may also designate whether a variety is considered to be a Variety of Concern or Prohibited Variety.
 - (3) If the variety or strain is not listed on the Summary of Varieties List, the licensee shall submit a New Hemp Variety Form or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral delta-9-THC (must be measured post-decarboxylation, also referred to as Total THC) content of not more than the acceptable hemp THC level on a dry weight basis from an independent third-party laboratory.
- (b) A licensee who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request Form, prior to its use in crop production.
- (c) The Department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.
- (d) The Department shall not approve a New Hemp Variety or Strain Request if a representative of the Department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (must be measured post-decarboxylation, also referred to as Total THC) content of more than the acceptable hemp THC level on a dry weight basis.
- (e) A licensee shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the Department’s published Summary of Varieties List.
- (f) Upon request from a representative of the Department, a licensee shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.
- (g) Any person engaging in the distribution of viable hemp seeds shall adhere to applicable Arkansas Seed Laws and any rules promulgated thereunder.
- (h) Any person who intends to move transplants or other living plants to a location outside of Arkansas must obtain either:
 - (1) A Nurseryman’s License issued by the Department; or
 - (2) A phytosanitary certificate issued by the Department.

SECTION 11. SEEDS OF WILD, LANDRACE, OR UNKNOWN ORIGIN

- (a) No person shall acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the Department.
- (b) The Department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the Department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the Department or its designee.
- (c) Any licensee found to have saved seed, propagules or cuttings, or cultivated seeds, propagules or cuttings from a cannabis plant of wild, landrace, or unknown origin without advanced written permission from the Department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

SECTION 12. CROP ACREAGE REPORTS TO FARM SERVICE AGENCY (FSA)

- (a) Within fifteen days of each lot planting and prior to the submission of Department planting reports, a licensed grower shall report hemp crop acreage to FSA, including at a minimum the following information:
 - (1) Street address and, to the extent practicable, GPS coordinates for each field or greenhouse where hemp will be produced;
 - (2) Acreage (or square footage, in the case of a greenhouse or other indoor growing facility production) dedicated to the growing of each planted lot of hemp, including each lot's full variety name; and
 - (3) The grower's name and license number.
- (b) Licensees shall provide copies of FSA reports to the Department upon request.
- (c) Licensees shall provide the Department upon request with any additional planting or growing information that is reasonably related to monitoring licensee hemp operations or for statistical purposes.
- (d) Licensees shall provide the Department with FSA Lot Numbers for each planted lot of hemp to be included on the Department's associated planting report forms.

SECTION 13. PLANTING REPORTS FOR OUTDOOR PLANTINGS

- (a) A licensed grower shall submit to the Department a complete and current Field Planting Report within fifteen (15) days after every planting, including replanted lots of seeds or propagules in an outdoor location, after first obtaining FSA Lot Numbers for each planted lot.
- (b) Each Field Planting Report shall identify the:
 - (1) Correct variety or strain's full name;
 - (2) Address and Field Location ID as listed on the hemp license;
 - (3) Lot number provided by the FSA office; and
 - (4) Amount planted and the primary intended use of the harvest.
- (c) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp license shall submit a Field Planting Report on or before July 31st of each calendar year, stating that hemp has not been planted and will not be planted at that site.

SECTION 14. PLANTING REPORTS FOR INDOOR/GREENHOUSE PLANTINGS

- (a) A licensed grower shall submit to the Department a complete and current Greenhouse/Indoor Planting Report Form within fifteen (15) days after establishing plants at an indoor location.
- (b) Each Greenhouse/Indoor Planting Report Form shall identify the:
 - (1) Correct variety or strain name's full name;
 - (2) Address and Greenhouse or indoor growing location ID as listed in the hemp license;
 - (3) Lot number provided by the FSA Office, if applicable; and
 - (4) Amount planted and the primary intended use of the harvest or of the hemp plants.
- (c) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the Department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

SECTION 15. SITE ACCESS

- (a) Licensees shall permit a representative of the Department or law enforcement agency to enter the premises where hemp or other cannabis seeds, plants, or material are located, and any premises listed in the hemp license, for any lawful purpose and with or without advance notice.
- (b) An applicant or hemp licensee shall obtain in writing from the owner of any leased or rented field or structure the owner's acknowledgement that both licensee and owner will abide by these rules and the Act using.

SECTION 16. HARVESTING

- (a) The Department may inspect a hemp licensee's premises or collect samples of any hemp or other cannabis material at any time.
- (b) The grower shall not harvest hemp plants from a lot without the Department first collecting samples from that lot.
- (c) Fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the Department a completed harvest request form identifying the intended date of harvest (or date of destruction in the case of a failed crop).
- (d) During the Department's scheduled sample collection, the grower or an authorized representative of the grower shall be present at the growing site.
- (e) Representatives of the Department shall be provided with complete and unrestricted access 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 hemp license.
- (f) The hemp licensee shall harvest the crop not more than thirty (30) days following the date of sample collection by the Department, unless specifically authorized in writing by the Department.
- (g) If the hemp licensee fails to complete a harvest within thirty (30) days following the date of sample collection, grower shall submit a new harvest request and additional pre-harvest sample fee prior to harvesting.
- (h) Hemp floral material shall not be moved outside Arkansas, nor out of the possession of a licensee, nor commingled or extracted, until the Department certifies that the subject hemp is compliant.

- (i) Harvested materials from one lot shall not be commingled with other harvested lots unless all harvested lots are certified as compliant by the Department.

SECTION 17. IMPORTATION OF HEMP MATERIAL INTO ARKANSAS

- (a) No person shall import hemp into the state of Arkansas without a hemp license issued pursuant to these rules.
- (b) All imported hemp shall comply with this rule, the Act, and all applicable state and federal laws.
- (c) Nothing in this rule shall be construed as to prohibit the transportation or shipment of hemp lawfully produced under a federal, state, or tribal plan approved by the United States Department of Agriculture, through the state of Arkansas and where the state of Arkansas is not the final destination for the transported hemp.

SECTION 18. PROHIBITED ACTIVITIES

- (a) No person shall violate any provision of this rule, the Act, or any other federal or state law, rule, or order while engaging in the activities governed by this rule or the Act.
- (b) A hemp licensee shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf materials, or floral materials to any unlicensed person in Arkansas.
- (c) A licensee shall not grow, process, sell or transfer, or permit the sale or transfer of substances listed or described in the schedules of controlled substances in the Arkansas Uniform Controlled Substances Act or the United States Controlled Substances Act.
- (d) No person shall knowingly, intentionally, recklessly, or negligently sell, offer to sell, allow the sale, or otherwise distribute industrial hemp to a person or persons engaged in the illegal manufacture of substances listed or described in the schedules of controlled substances in the Arkansas Uniform Controlled Substances Act, Ark. Code Ann. § 5-64-101 et seq., or the United States Controlled Substances Act, 21 U.S.C. § 812 et seq.
- (e) A hemp licensee shall not provide false, misleading, or incorrect information to the Department pertaining to the licensee's cultivation, processing, or transportation of hemp, including without limitation any information provided within any application, report, record, or inspection required or maintained in accordance with these rules and the Act.
- (f) A hemp licensee selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including cannabidiol), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.
- (g) A hemp licensee shall not sell or transfer floral extracts containing a decarboxylated delta-9-THC concentration greater than zero and three-tenths (0.3) percent.
- (h) Hemp licensees shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.
- (i) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.
- (j) A hemp licensee shall not allow another person, other than an agent of the licensed grower, to grow, handle, process, or store hemp under their license in lieu of obtaining a separate hemp license.

- (k) A hemp licensee shall not detach, alter, deface or destroy any labeling or other required documentation specified in these rules, or alter or substitute seed or transplants in a manner that may defeat the purpose of these rules.
- (l) A hemp licensee shall not hinder or obstruct in any way any authorized representatives of the Department or any law enforcement agency in the performance of his or her duties.
- (m) A hemp licensee shall not commingle harvested hemp or other cannabis material from one lot with harvested material from another lot unless all lots have been certified compliant by the Department.
- (n) A licensee shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in Arkansas who does not hold a hemp license.

SECTION 19. ENFORCEMENT ACTIONS

- (a) Any person that violates the Act or these rules shall be subject to one or more of the following:
 - (1) Civil penalties up to \$5,000 per violation;
 - (2) Corrective Action Plan;
 - (3) Issuance of a stop order;
 - (4) License suspension; or
 - (5) License revocation.
- (b) Any licensee that commits three (3) negligent violations within a 5-year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to the effective date of the Act shall not be counted.
- (c) In instances where a licensee commits a violation with a culpable mental state greater than negligence, the board may initiate revocation or suspension proceedings against the licensee and shall immediately report the licensee to the Arkansas Office of the Attorney General and all appropriate law enforcement agencies.

SECTION 20. HEARINGS AND APPEALS

- (a) All hearings and appeals shall be conducted in accordance with the Arkansas Administrative Procedure Act, Ark. Code Ann. §25-15-201 et seq., except that:
 - (1) Before revocation of a grower's license, the board shall provide the grower notice and an informal hearing to show cause why the license should not be revoked and the grower's right to grow forfeited.
 - (2) If a license is revoked and a grower's right to grow is forfeited as the result of an informal hearing under subdivision (b)(1) of this section, the grower may request a formal administrative hearing before the board or a committee of the board, as provided in board rules.
- (b) A person wishing to appeal a final action of the Board shall submit a written request for a hearing to the Department within thirty (30) days of notice.

SECTION 21. RECORDKEEPING

- (a) For at least three (3) years, hemp licensees shall keep and make available for inspection by the Department the following records:
 - (1) Records regarding acquisition of hemp plants;
 - (2) Records regarding production, processing, and handling of hemp plants;
 - (3) Records regarding storage of hemp plants;
 - (4) Records regarding disposal of all hemp plants; and
 - (5) Records regarding the disposal of all cannabis plants that do not meet the definition of hemp.
- (b) The Department and any law enforcement agency shall have access to any premises where industrial hemp, or cannabis plants purported to be industrial hemp, may be held during normal business hours.

SECTION 22. CORRECTIVE ACTION PLANS FOR NEGLIGENT VIOLATIONS

- (a) If the Department determines that a licensee committed a negligent violation of any provision within A.C.A. § 2-15-501 *et seq.*, or any rule promulgated under the authority of the Arkansas Hemp Production Act, then the Department may issue a corrective action plan for the grower.
- (b) Corrective action plans will remain in place for at least two (2) years and include, at a minimum, the following:
 - (1) The date by which the grower shall correct each negligent violation;
 - (2) Steps to correct each negligent violation; and
 - (3) A description of the procedures to demonstrate compliance.

Legal Notice

Arkansas State Plant Board

The Arkansas State Plant Board is proposing adoption of the Arkansas Industrial Hemp Production Rule. Current industrial hemp rules will be repealed, and new rules will be adopted to provide for transitioning industrial hemp production in the state from research-only to a regulated agricultural industry.

Written comments can be mailed to: Arkansas Department of Agriculture – Attn: Caleb Allen, 1 Natural Resources Dr., Little Rock, AR 72205, or submitted electronically at <https://forms.office.com/g/vDUm1S4mSy>

Written comments will be accepted beginning March 12, until 5:00 p.m. on April 10, 2022. Oral comments may be made in person at the Arkansas Department of Agriculture, 1 Natural Resources Drive, Little Rock, AR 72205 on April 14, 2022, at 9:30 a.m.

The proposed rules can be viewed on the website at www.agriculture.arkansas.gov



Wade Hodge, Legal Counsel
Arkansas Department of Agriculture