

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. HEMP PROGRAM

The Texas Department of Agriculture (TDA or the Department) adopts new Title 4, Part 1, Chapter 24, Hemp Program, Subchapter A, General Provisions, §§24.1 - 24.4; Subchapter B, Fees, §§24.5 - 24.7; Subchapter C, Licensing, §§24.8 - 24.19; Subchapter D, Inspections, Sampling and Collection, §§24.20 - 24.23; Subchapter E, Testing, §§24.24 - 24.29; Subchapter F, Disposal, §24.30 and §24.31; Subchapter G, Enforcement, §§24.32 - 24.38; Subchapter H, Transportation, §§24.39 - 24.43; Subchapter I, Hemp Seed, §§24.44 - 24.48; and Subchapter J, Agricultural or Academic Hemp Related Research, §24.49 and §24.50.

Sections 24.3 and 24.4 of Subchapter A, General Provisions; §§24.5- 24.7 of Subchapter B, Fees; §§24.11, 24.12, 24.14, 24.16- 24.19 of Subchapter C, Licensing; §§24.20- 24.23 of Subchapter D, Inspections, Sampling and Collection; §§24.25- 24.29 of Subchapter E, Testing; §24.30 and §24.31 of Subchapter F, Disposal; §§24.32- 24.38 of Subchapter G, Enforcement; §24.41 and §24.43 of Subchapter H, Transportation; §§24.44, 24.46, 24.48 of Subchapter I, Seed; and §24.49 and §24.50 of Subchapter J, Agricultural or Academic Hemp Related Research, are adopted without changes to the proposal published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 245) and will not be republished. Sections 24.1 and 24.2 of Subchapter A, General Provisions; §§24.8- 24.10, 24.13, 24.15 of Subchapter C, Licensing; §24.24 of Subchapter E, Testing; §§24.39, 24.40, 24.42 of Subchapter H, Transportation; and §24.45 and §24.47 of Subchapter I, Seed, are adopted with changes to the proposal published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 245) and will be republished.

The adopted rules are for TDA's administration of hemp production to comply with the Agricultural Improvement Act of 2018 (2018 Farm Bill) enacted by the 115th United States Congress, and House Bill 1325 (HB 1325) enacted by the 86th Texas Legislature. The adopted rules will regulate and license the growth and distribution of hemp and nonconsumable hemp products in Texas.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The public comment period on the proposal began January 11, 2020, and ended February 10, 2020. The Department held a public hearing on January 22, 2020. Following is a summary of all public comments received from individuals, law firms, laboratories, and farm groups, and the corresponding agency responses.

COMMENT 1: Commenters submitted comments expressing general support for the new regulations.

AGENCY RESPONSE: TDA agrees and has maintained most of the language subject to the changes discussed below.

COMMENT 2: Commenters submitted comments regarding the prohibition on the manufacture of smokable consumable hemp products in Texas. A commenter states there should be smokable hemp and one should be able to grow hemp if you're an individual in your backyard. A commenter requests that the wording and terms regarding smokable flower be clarified since hemp is a smokable flower.

AGENCY RESPONSE: The Texas Agriculture Code §122.301(b) does not allow a state agency, including TDA to authorize a person to manufacture a product containing hemp for smoking. Additionally, the Texas Department of State Health Services is the agency with jurisdiction over consumable hemp products.

COMMENT 3: A commenter objects to the prohibition on the sale of smokable consumable hemp products in Texas.

AGENCY RESPONSE: This matter is not within the scope of the proposal and not within TDA's regulatory jurisdiction.

COMMENT 4: A commenter recommends TDA consider developing and maintaining an electronic reporting system that covers cultivation consistent with other agriculture practices, enables tracking of hemp transfer, import or export within Texas or between Texas and other states, provides a more granular capture of data for CBD derived from hemp that is intended for use in consumer products, and incorporated secure, traceable stamps or labels on products using CBD derived from hemp for compliance and consumer safety.

AGENCY RESPONSE: TDA appreciates the recommendation but declines to address this comment at this time as this matter is not within the scope of the proposal.

COMMENT 5: One commenter recommends that TDA's rules provide for "automatic adjustment to be immediately implemented," in order for TDA's rules to immediately be adjusted in response to possible revisions to the United States Department of Agriculture's ("USDA") Interim Final Rule implementing the 2018 Farm Bill, published October 31, 2019, at 84 FR 58522-58564 (the "IFR").

AGENCY RESPONSE: TDA appreciates the comment and notes that the USDA IFR may indeed be revised prior to adoption of a final rule by USDA. However, TDA declines to revise its rules based on this comment. TDA intends to closely monitor USDA rules and guidelines regarding hemp, as well as the development of the hemp industry, and will make changes to its rules pertaining to hemp in accordance with the law.

COMMENT 6: A commenter requests for TDA to add a rule for farmers who would like to grow hemp for seed production.

AGENCY RESPONSE: The agency declines to add a rule specifically for farmers who would like to grow for seed production as this activity is already captured in the general rules applicable to producers.

COMMENT 7: Multiple commenters request the rules provide for a nominal amount of hemp to be grown at home for personal use never to be introduced to market.

AGENCY RESPONSE: Federal and state statutes and the IFR evidence an intent to develop commercial opportunities in the hemp industry. With the limited time and resources available to the agency a state plan and state rules capable of encouraging and regulating a personal use market are not feasible at this time.

COMMENT 8: A commenter strongly urges TDA to further examine the possibility for Texas to create an international hemp production export program under its own rules for markets outside of the United States that do not need to be constrained by the 2018 Farm Bill or the IFR.

AGENCY RESPONSE: TDA's Trade and Business division are dedicated to expanding international opportunities for Texas products. At this time TDA has not been statutorily authorized, or funded, to expand the hemp program past the issuance of a transport manifest allowing the product to be transported locally, in interstate trade, and potentially into world markets.

COMMENT 9: A commenter suggests additional consideration be given for TDA to authorize a pilot program under the 2014 Farm Bill, which is still operational until November 1, 2020, and provides for the establishment of a hemp production program to research potential markets within the state without having to comply with the IFR rules which have drawn significant ire and concern. Some states have chosen to continue operations under their 2014 programs for this same reason. The commenter suggests TDA explore this option as a way to build on the excitement of opening up the hemp market in Texas, but doing so in a manner that will not be as risky considering the constraints of the 2018 Farm Bill and the IFR.

AGENCY RESPONSE: TDA was directed by statute to submit a state hemp plan to USDA. TDA has not been authorized by the Texas Legislature to establish a pilot program under the 2014 Farm Bill. Additionally, resources for the establishment of additional hemp programs are not available to TDA at this time. TDA must operate within the fiscal appropriations available to TDA as directed by the Texas Legislature.

COMMENT 10: One commenter requests that "all words in any defined terms be capitalized, and that all defined terms used throughout the Rules also be capitalized."

AGENCY RESPONSE: TDA declines to revise its rules based on this comment as the format utilized for its rules is appropriate.

COMMENT 11: One commenter expresses concern that the use and/or definition of certain terms "applicant," "person," and "business entity," are confusing and requests they be revised.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. The definitions of "applicant," "person," and "business entity," and the terms included in those definitions, are consistent with their definitions and usage in the Texas Agriculture Code and other Texas statutes as well as the regulatory intent provided by the IFR. TDA notes that the definition of "applicant" suggested by the commenter does not appear to materially change the definition already included in TDA's rules.

COMMENT 12: One commenter requests clarification of when licensees should notify TDA pursuant to rule §24.13(j) notification of theft of cannabis requirements.

AGENCY RESPONSE: The agency agrees that additional clarification is necessary. TDA revised rule §24.13(j) to reflect that licensees should promptly notify TDA, as well as local law enforcement officials, upon discovery of the theft of cannabis within 48 hours after discovery of the theft of cannabis. Licensees should provide name, license number, permit number, and date of discovery of the theft when contacting TDA to notify of cannabis theft.

COMMENT 13: One commenter requests clarification of rule §24.23(c), which prohibits commingling of cannabis among lots or with other materials prior to processing without prior permission from TDA. The commenter requests that this rule be revised to provide that permission to commingle would be automatically received upon receipt of passing test results from an approved laboratory stating such cannabis is within the "acceptable THC Level."

AGENCY RESPONSE: TDA appreciates the comment but declines to revise its rules in response this comment at this time. As previously noted, hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. It is therefore necessary for state and federal regulators to be able to trace cannabis throughout the production and distribution process.

COMMENT 14: A public commenter advises against growing hemp in Texas because it would allow at least four different agents on one's property and into one's home and finances. The commenter states that an individual should be able to grow hemp in their back yard for personal reasons.

AGENCY RESPONSE: TDA appreciates the comment and notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 15: A public commenter requests that seed be given to farmers when they register for their permits.

AGENCY RESPONSE: Persons interested in cultivating hemp will be responsible for the lawful purchase of hemp seeds.

COMMENT 16: A commenter asks how TDA will work with banks to make sure that banks will be giving out loans to small farms for the cultivation of hemp. A commenter suggests that something should be written in the bill to give people an opportunity to give a loan.

AGENCY RESPONSE: This matter is not within the scope of the proposal and not within TDA's regulatory jurisdiction.

COMMENT 17: Commenters request for TDA to add, delete, modify or redefine the following terms in rule §24.1:

1. **"Acceptable THC level"**. Multiple commenters request for TDA to revise the definition of "acceptable THC level" in rule §24.1(2) to explicitly exclude tetrahydrocannabinol-acid (THCA), and to increase the acceptable THC level to over .3%.
2. **"Certified or Approved Hemp Seed"**. This term is used only once in the body of the proposed rules as a header, and the commenters suggest the language in the proposed definition instead be moved to the text of Subchapter I (Hemp Seed) and the defined term removed.
3. **"Commissioner"**. A commenter states this term is not used anywhere in the text of the proposed rules and recommends it be removed.
4. **"Criminal History Report"**. As this term is not used in the body of the proposed rules, a commenter suggests the defined term either be removed or otherwise incorporated.
5. **"Dry Weight basis"**. A commenter requests the term be redefined.
6. **"Governing Person" and "Key Participant"**. A commenter requests the phrase "governing person of a business entity that holds a license" in rule §24.9(c) instead be replaced with the phrase "Key Principal of a License Holder" and that the term "governing person" be removed from the definitions in rule §24.1. The commenter also requests rule §24.9(c) be revised as follows: "A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license or be a Key Principal of a License Holder governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018."
7. **"Handle"**. A commenter requests for TDA to redefine this term.
8. **"Harvest"**. Multiple commenters request this definition be revised.
9. **"Information Sharing System"**. A commenter states this term is not used anywhere in the text of the rules and recommends it be removed.
10. **"License"**. A commenter requests this definition be revised accordingly to include a sampler/collector license.
11. **"Marijuana or Marihuana"**. The last sentence of this definition - "'Marihuana' means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent." should be deleted.
12. **"Nonconsumable Hemp Product"**. A commenter recommends the rules reiterate the concepts surrounding this term as stated in HB 1325 and perhaps flesh them out further.
13. **"Organic Hemp"**. A commenter requests for TDA to define "organic hemp".
14. **"Permit or Lot Permit"**. A commenter requests the initial use of the word "Permit" should be deleted as only the term "Lot Permit" is used within the body of the proposed rules.
15. **"Phytocannabinoid"**. A commenter states this term is not used anywhere in the text of the proposed rules and recommends it be removed.
16. **"Processing"**. A commenter requests for this term to be expressly differentiated between its meaning within the TDA program and its meaning under the Department of State Health Services program.

17. "Producer". A commenter points out the term "Producer" is defined in the rules quite differently than in the IFR, which defers to 7 C.F.R. §718.2, and suggests the term "Producer" be the definition set forth in the IFR.

18. "Sample Collection Date". A commenter states the definition of the term "Sample Collection Date" includes a concept about the determination of such date possibly taking into account force majeure or other unusual circumstances, which is stated to be critical to the success of this program and applauds TDA for incorporating such a concept.

19. "Seed Source". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

20. "Signing Authority". As this term is used only once within the rules, a commenter believes it may be better to delete it.

21. "Specimen". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

22. "Transport Manifest". Rather than use the term "includes" in this definition, a commenter recommends using the term "is comprised of" to avoid any confusion or question as to whether anything more is needed to be deemed a complete "Transport Manifest."

23. "Unique ID". As this term is not used anywhere in the text of the rules, a commenter recommends it be removed.

AGENCY RESPONSE: The agency agrees or declines to delete, modify or redefine some terms in rule §24.1 as follows:

1. "Acceptable THC level". The agency disagrees and declines to make any changes in response to the comment. 7 C.F.R. §990.3(a)(2)(i) requires a State desiring to have primary regulatory authority over the production of hemp to include a procedure for testing that is able to accurately identify whether the sample contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. 7 C.F.R. §990.1 defines "acceptable hemp THC level" as when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For this reason, TDA is adopting the definition of "acceptable THC level" in accordance with 7 C.F.R. §990.3(a)(2)(i).

2. "Certified or Approved Hemp Seed". The agency declines to redefine this term at this time. TDA defined this term to be consistent with 7 C.F.R. §990.

3. "Commissioner". The agency agrees and has deleted this term in rule §24.1.

4. "Criminal History Report". The agency agrees and has deleted the word "report" in rule §24.1.

5. "Dry Weight Basis". The agency disagrees and declines to make any changes in response to the comment. The definition of "dry weight basis" is similar to the definition as stated in 7 C.F.R. §990.

6. "Governing Person" and "Key Participant". The agency declines to redefine this term at this time. TDA purposefully defined such terms to be consistent with 7 C.F.R. §990. However, the agency agrees to modify rule §24.9(c), by removing "governing person", and replacing the term with the phrase "key participant of a license holder."

7. "Handle". The agency declines to redefine this term at this time. The current definition of "handle" is consistent with 7 C.F.R. §990 and the Texas Agriculture Code §122.

8. "Harvest". The agency declines to redefine this term at this time. TDA purposefully defined harvest to be consistent with 7 C.F.R. §990 and the Texas Agriculture Code §122. TDA also purposefully defined harvest to

include the sale of any transplant to another license holder in order to create a regulatory framework whereby TDA is able to track the movement of each hemp lot when it leaves a license holder's control until it is delivered to a processor.

9. "Information Sharing System". The agency declines to redefine this term at this time. TDA purposefully defined this term to be consistent with 7 C.F.R. §990.

10. "License". The agency agrees this term needed modification for clarification. TDA added the word "sampler" in rule §24.1(42).

11. "Marijuana or Marihuana". The agency declines to redefine this term at this time. TDA defined this term to be consistent with 7 C.F.R. §990.

12. "Nonconsumable Hemp Product". The agency declines to redefine this term at this time. TDA purposefully defined this term to be consistent with the Texas Agriculture Codes §121 and §122.

13. "Organic Hemp". The agency declines to define this term at this time but will consider this in future rulemaking. Currently, organic standards and certification are governed by 7 C.F.R. §205 and Texas Agriculture Code §18.

14. "Permit or Lot Permit". The agency agrees this term needed modification. TDA deleted the word "permit" in the rule.

15. "Phytocannabinoid". The agency declines to delete this term at this time. TDA purposefully defined this term to be consistent with 7 C.F.R. §990.

16. "Processing". The agency declines to redefine this term at this time. The current definition is consistent with the term's use and meaning within the agricultural industry.

17. "Producer". The agency agrees and has redefined this term in accordance with 7 C.F.R. §718.2.

18. "Sample Collection Date". The agency agrees and has not modified this term.

19. "Seed Source". The agency agrees and has deleted this term.

20. "Signing Authority". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

21. "Specimen". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

22. "Transport Manifest". The agency declines to redefine this term at this time. The current definition of this term is helpful in the implementation of the program.

23. "Unique ID". The agency declines to delete this term at this time. Defining this term is helpful in the implementation of the program.

COMMENT 18: A commenter submitted comments related to the decriminalization of marijuana for cultivation and personal use.

AGENCY RESPONSE: The agency declines to address this matter as it is out of scope with the proposed rules.

COMMENT 19: A commenter asked for clarification of rule §24.15, pertaining to license holders who transplant. Specifically, the commenter asked if the "cultivation" area is where the seeds are germinated and the "final transplantation area," is where they are subsequently planted.

AGENCY RESPONSE: Yes, the "cultivation" area is where the seeds are germinated and the "final transplantation area," is where the transplants are subsequently planted for later harvest.

COMMENT 20: Multiple commenters object to the fee schedule in the rules.

AGENCY RESPONSE: The agency declines to make any changes to the fee schedule. TDA is authorized under Texas Agriculture Code §122.052 to set and collect the amounts stated. The hemp program is a cost recovery program at TDA, and TDA is tasked by the Texas Legislature to collect adequate funds through licensing and fees to support the costs of the program.

COMMENT 21: A commenter proposes that TDA's rules allow for non-facility-related amendments to be permitted without a fee subject to staff approval. The commenter further requested clarification of rules §24.13(d), §24.14(b), §24.14(d), and §24.16 (pertaining to facility addition fees and facility modification fees).

AGENCY RESPONSE: In response to the commenter's request that TDA change its rules to allow for non-facility-related amendments to be permitted without a fee subject to staff approval, TDA declines to revise its rules based on this comment. In regard to what changes constitute an addition or modification, rule §24.16(a) specifies that adding a *new* facility under an existing license - other than the facility specified in the original license application - constitutes a *facility addition*. Rule §24.16(b) specifies that changing the geospatial location of a facility already registered under an existing license constitutes a *modification*.

COMMENT 22: A commenter states that Oklahoma requires individuals to be a resident for two years prior to planting cannabis in the state and suggested that Texas residents, minorities, and veterans should be first to get a license in Texas. The commenter asked if there will be a preference given to Texas residents when it comes to getting a license for hemp.

AGENCY RESPONSE: Individuals are not required to be Texas residents for two years prior to planting cannabis in Texas. There is no preference given to Texas residents, veterans, or minorities in determining priority or issuance of hemp licenses.

COMMENT 23: A commenter requests that individuals should be able to grow hemp if they have a non-violent criminal history.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participating in the Texas hemp program for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence.

COMMENT 24: A commenter requests that there be a guaranteed number of permits set aside for Texas residents to produce hemp in the state.

AGENCY RESPONSE: There is no set limit for hemp permits, regardless of residency of producer.

COMMENT 25: A commenter requests additional information regarding licensing and asks if there is a way to pre-register for licensing and how long the licensing process will take.

AGENCY RESPONSE: Licenses will be processed in the order they are received. There will be no pre-registration for licenses. The time for processing each license will vary depending on the circumstances associated with each license application. TDA has up to 60 days from the license application date to issue a license.

COMMENT 26: A commenter requests more specification on what is considered a lot and for it to be more defined in the rules.

AGENCY RESPONSE: TDA declines to revise its rules in response to this comment. A lot is defined by rule §24.1(46) to implement the Texas Agriculture Code, federal law, and the USDA IFR.

COMMENT 27: A commenter requests clarification or a consolidated list of the requirements for a license.

AGENCY RESPONSE: TDA declines to provide an itemized list in response to this comment of what should or should not be included in a license application submission. TDA notes that TDA is promulgating license application forms that will be available online which will direct applicants to provide information required to complete a hemp license application.

COMMENT 28: A commenter requests for a license be renewed every two years instead of annually.

AGENCY RESPONSE: The agency declines to make changes. Texas Agriculture Code §122.104 states that a license is valid for one year and shall be renewed annually.

COMMENT 29: Multiple commenters submitted comments proposing rules regulating the locations where hemp can be planted. Specifically, the commenter proposed restrictions on planting hemp near schools, residential and other highly populated areas due to the potential for theft and criminal activity.

AGENCY RESPONSE: The agency understands the risks associated with this emerging industry. However, TDA does not have the constitutional or statutory authority to regulate the proximity of hemp to schools, residential areas, or any other locations. Normally, these type of issues would be addressed at the local level through municipal ordinances. However, the Texas Agriculture Code §122.002 prohibits "a municipality, county, or other political subdivision of the state" from enacting, adopting, or enforcing "a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, handling, transportation, or sale of hemp."

COMMENT 30: A commenter asks for clarification regarding the evaluation criteria for an applicant, specifically, the language in rule §24.10(b) which states the applicant's history with other TDA programs "shall demonstrate a willingness to comply", and rule §24.10(c) requiring an applicant to "be in good standing with TDA."

AGENCY RESPONSE: The agency agrees that additional clarification is necessary. TDA did not make any changes to rule §24.10(b). Evidence of previous violations and compliance with agency final orders indicate a person's willingness to comply with agency rules and instructions. TDA took action to amend rule §24.10(c) - "good standing" has been deleted and replaced with "the applicant does not owe TDA any money under a final order."

COMMENT 31: A commenter recommends rule §24.13(i) which requires licensees to notify TDA within 24 hours of any interaction with any U.S. authority followed by a written notification to TDA within 3 days, be deleted or amended specifically to apply to interactions with law enforcement which result in detention, arrest or citation.

AGENCY RESPONSE: TDA appreciates the comment. However, TDA declines to revise its rules based on this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participation in the Texas hemp plan for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence. TDA's rules requiring licenses to immediately notify TDA of any interaction with law enforcement officials are therefore reasonable and necessary to comply with Texas state law, the federal guidelines contained in the IFR, and to protect the safety and welfare of the public.

COMMENT 32: A commenter comments that prohibiting license holders from producing or handling any cannabis that is not hemp, is too restrictive and requested that rule §24.14(a) be clarified or limited to only

prohibit "knowingly or intentionally" producing or handling cannabis that is not hemp. The commenter notes concerns that "good actors" not be penalized for negligent violations.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Rule §24.14(a) is a clear restatement of the prohibition against the production or handling of cannabis that is not hemp under Texas state and federal law. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. TDA further notes that its rules contain exceptions providing for situations where negligent violations of the rules occur.

COMMENT 33: A commenter asked whether the Department mandatory orientation course required by rule §24.8 will be available online. The commenter also asked when the course details will be provided to ensure sufficient time to complete, so as not to delay in submitting a license.

AGENCY RESPONSE: The Department mandatory orientation course required by rule §24.8 will be available online. The course will be available online at the time of filing for an application and will be approximately 30 minutes in length. It will not delay the applicant in submitting a license.

COMMENT 34: A commenter asked if the TDA will address potential issues with backlogged pending results, especially during crucial times such as harvesting.

AGENCY RESPONSE: TDA is bound by the Texas Agriculture Code requiring test results be available within 14 days from sample collection.

COMMENT 35: A commenter suggests that there be a split program for sampling and a separate workshop relating to sampling.

AGENCY RESPONSE: A Department mandatory training video, required to be viewed by all applicants, will be available online when applicants begin applying for hemp licenses. Separate, sampling-specific information and training materials, will be available to, and required to be viewed by, those seeking a sampler license.

COMMENT 36: Commenters object to the language in rule §24.21 requiring producers to harvest hemp plants within 15 days from sample collection. They request TDA to modify the 15-day window.

AGENCY RESPONSE: The agency disagrees and declines to make any changes in response to the comment. 7 C.F.R. §990.3 requires the State's plan to include a procedure to collect samples within 15 days prior to the anticipated harvest of cannabis plants. Although this 15-day requirement conflicts with the "20 day" language in Texas Agriculture Codes §122.154 and §122.201, Texas Agriculture Code §122.004 invalidates a provision of the Texas Agriculture Code if USDA "determines that the provision ... conflicts with 7 U.S.C. Chapter 38, Subchapter VII , and prevents the approval of the state plan submitted under Chapter 12 1." For this reason, TDA must enforce the 15-day requirement in accordance with 7 C.F.R. §990.3(a)(2)(i).

COMMENT 37: A commenter requests for TDA to issue waivers for pre-harvest and post-harvest testing in situations of force majeure when crops are destroyed by natural forces or some other circumstances outside the control of the license holder, and for TDA to define the term "force majeure".

AGENCY RESPONSE: This has been addressed in rule §24.21(b)(3) which allows for additional pre-harvest sample requests under unusual circumstances. TDA declines to define "force majeure" at this time. Force majeure events are generally recognized in the agricultural community and can result from weather conditions, economic conditions and acts of God. TDA will use its flexibility to determine force majeure conditions as they occur. 7 C.F.R. §990.3 requires the State's plan to include a procedure to collect samples within 15 days prior to the anticipated harvest of cannabis plants, and does not give the State the option of conducting post-harvest sampling.

COMMENT 38: Commenters object to the language in rule §24.15 regarding transplants, specifically the definition of a transplant, the requirement for a permit applicant to indicate the initial area of cultivation, final transplantation area and anticipated dates of transplant, and classifying a sale of a transplant to another license holder as a "harvest". Commenters request an exception to this harvest rule for some plants, perhaps with certain age or size restrictions, to be cultivated for sale without triggering all of the additional regulatory requirements designed to apply to the harvesting of a regular hemp crop.

AGENCY RESPONSE: The agency disagrees and declines to make any changes in response to the comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. TDA purposefully defined harvest to include the sale of any transplant to another license holder in order to create a regulatory framework whereby TDA is able to track the movement of each hemp lot when it leaves a license holder's control until it is delivered to a processor.

COMMENT 39: Multiple commenters request for sampling rules and procedures to specify that the samples should be from the plants' flowers given that the flowers provide the vast majority of the plants' cannabinoids. The commenters also request that while a sample should be taken from the top third of the plants, only part of that area should be sampled such that a minimum number of grams is sampled and shipped to the laboratory for homogenization and testing.

AGENCY RESPONSE: The agency declines to make changes at this time. TDA's rules and procedures related to sampling are consistent with USDA rules and procedures in 7 C.F.R. §990.

COMMENT 40: A commenter requests clarification for who can collect samples and whether a producer may choose their own sampler or laboratory for testing.

AGENCY RESPONSE: As stated in the proposed rules, only a sampler licensed with TDA may collect samples. A producer has the option of choosing their own sampler and laboratory so long as the sampler is licensed with TDA and a laboratory is registered with TDA.

COMMENT 41: A commenter requests rule §24.21(a)(2), which provides that a sample request triggers a site inspection, be revised. The commenter submits that the rule §24.21(a)(2) inspection provision seems excessive and unnecessary. The commenter asks that the rule be revised to only trigger a sample collection.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. The clear purpose and intent of the Texas state law, federal law, and federal guidelines (IFR) regarding the cultivation of hemp, is to not only permit the cultivation of hemp, but also to closely monitor its production, handling, transport, and destruction to ensure that marijuana, a controlled substance, is not produced or distributed into commerce illegally. The Texas Agriculture Code authorizes TDA to enter onto and randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with the law. The Texas Agriculture Code further authorizes the Texas Department of Public Safety ("DPS") to inspect and collect samples and mandates that license holders are required to allow - and to provide written consent to - TDA, DPS, and any other state or local law enforcement agency to enter on to all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with the Texas Agriculture Code or TDA rules. In light of the clear need and legal mandates that TDA closely monitor hemp, a site inspection occurring at or near the time that a representative sample of a cannabis crop is taken is reasonable, as it provides an opportunity for TDA to inspect the hemp crop at or near harvest and provides notice that the hemp crop may soon be transported for processing, distributed into commerce, or destroyed in accordance with the law.

COMMENT 42: One commenter requests that TDA's hemp sampling and collection procedures be revised to encompass sprouts, microgreens, and propagations/ transplants. The commenter requests that TDA's sampling and collection procedures be revised to provide for procedures where an immature plant without flowers may be required to be tested.

AGENCY RESPONSE: TDA's sampling and collection procedures are based on the federal guidelines provided by USDA in its IFR. TDA appreciates the comment, however, and provides the following clarification: In the event a plant without flowers requires testing, a representative sample may be collected from the growing portion of such plants in an amount and in a manner otherwise in compliance with TDA sampling and collection procedures pertaining to flowering cannabis plants.

COMMENT 43: Commenters request for TDA to include mobile laboratories to conduct testing. Multiple commenters proposed allowing non-DEA registered third party laboratories to conduct testing of hemp plants.

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. Per 7 C.F.R. §990, only DEA-registered laboratories are eligible to test hemp plants. The proposed rules do not prevent a DEA-registered laboratory from being a mobile laboratory.

COMMENT 44: Multiple commenters request an extension of the time limit laboratories should test hemp samples after receipt of such samples. Commenters also express concern regarding the requirement for laboratories to report results to TDA and producers no later than 14 days from sample collection date.

AGENCY RESPONSE: The agency declines to make changes at this time. Texas Agriculture Code §122.151(f) requires a license holder to be notified of the results of the test not later than the 14th day after the sample collection date or the date TDA receives the test results. As proposed, the rule allows the maximum flexibility to a producer to obtain sampling and testing services, given the fifteen (15) day window from notice of harvest to actual harvest.

COMMENT 45: A commenter requests for TDA to add the following language to rule §24.27(c): "unless the producer, law enforcement, or the Department request that the sample be retained for potential retesting, in which case the laboratory shall retain the sample for at least 30 days."

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. 30 days is a reasonable amount of time provided to the producer to request a second testing from the original sample if necessary.

COMMENT 46: A commenter requests a revision to rule §24.29 (b) to read "A license holder requesting a retest may use the same laboratory that conducted the first test, request that a portion of the retained sample be sent to a second laboratory for testing, or request that both the original and second laboratory conduct a second test on portions of the same sample."

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. Producers have the option of choosing where the original sample will be sent but producers must use the same laboratory for the first and final tests.

COMMENT 47: Multiple commenters request the potency testing be mandated with liquid chromatography instead of gas and that UV detectors be allowed for liquid chromatography.

AGENCY RESPONSE: The agency disagrees and declines to make changes at this time. TDA testing methods are consistent with USDA methods and standards as stated in 7 C.F.R. §990.

COMMENT 48: A commenter recommends for TDA to provide testing laboratories with personally identifying data sufficient for the laboratories to accommodate the large volume of samples during harvest season.

AGENCY RESPONSE: The agency is committed to assisting testing laboratories by providing the required information as much as possible while protecting certain personal and confidential information.

COMMENT 49: A commenter requests clarification on what rules laboratories must follow.

AGENCY RESPONSE: Laboratories will follow rule §24.24 and need to be registered with TDA under that rule.

COMMENT 50: A commenter requests clarification on laboratory registration fees.

AGENCY RESPONSE: The laboratory registration fee will be at least \$250.00.

COMMENT 51: A commenter requests clarification on whether a testing laboratory may charge a fee to the farmer for the destruction of a hemp sample testing >0.3% THC on a dry weight basis.

AGENCY RESPONSE: Yes, per rule §24.13(b) "a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations". The contract between the producer and the reverse distributor is not under TDA's authority.

COMMENT 52: A commenter requests clarification on whether TDA plans to provide analytical testing laboratories the transport manifest.

AGENCY RESPONSE: The transport manifest will be provided to the producer or if the transport manifest is for testing then it will be provided to the producer or sampler.

COMMENT 53: A commenter requests clarification on whether forms/records/reports will be required from analytical laboratories.

AGENCY RESPONSE: Yes, rule §24.28 applies. The forms are currently being developed by TDA and will be available prior to any anticipated harvest date.

COMMENT 54: A commenter requests clarification on whether TDA has any plans to test hemp samples within state laboratories with state employees (or something similar).

AGENCY RESPONSE: Yes, State statute gives TDA the authority test hemp samples as stated in Texas Agriculture Code §122.151.

COMMENT 55: A commenter requests clarification on whether a transport manifest for a preharvest sample transport is needed.

AGENCY RESPONSE: Transport manifests are not required prior to sampling but are necessary before the sample can be transported.

COMMENT 56: A commenter requests guidance on whether there is a source for use to educate individuals and laboratories to identify pest/diseases and what steps are required if a sample or a farmers lot is identified as containing a pest or disease.

AGENCY RESPONSE: This comment is not related to the proposed rules and will not be addressed. However, the agency will consider this comment in expanding the FAQ on the agency website.

COMMENT 57: A commenter requests clarification on whether rule §24.43 applies to laboratories and or sampling agents transporting samples for potency testing as it will increase cost to the farmers.

AGENCY RESPONSE: Yes this rule is in compliance with Texas Agriculture Code §122.201(c) which prohibits commingling.

COMMENT 58: A commenter asks when the list of department registered testing laboratories will be made available.

AGENCY RESPONSE: Laboratories will be able to register at the same time TDA begins accepting producer license application which will make the laboratory list available well before sampling is to be done.

COMMENT 59: A commenter suggests allowing disposal oversight by TDA and law enforcement agents to provide flexibility and minimize burdens on the farming community.

AGENCY RESPONSE: TDA declines to make changes at this time. 7 C.F.R. §990.3 requires the State's plan to include a disposal procedure in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15.

COMMENT 60: Commenters submitted comments proposing rules allowing a hemp grower to remediate a portion of a hemp plant that tests over the acceptable hemp THC level.

AGENCY RESPONSE: The agency declines to make any changes at this time. 7 C.F.R. §990.3(a)(3)(i) requires a State desiring to have primary regulatory authority over the production of hemp to follow a disposal procedure. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed or enter the stream of commerce and must be disposed of in accordance with 7 C.F.R. §990.27.

COMMENT 61: A commenter requests clarification on what is required for a completed disposal report and whether a transport manifest is required to send the material to a DEA-reverse distributor. The commenter also expressed concern regarding disposal timing issues.

AGENCY RESPONSE: The producer is responsible for reaching out to a DEA-reverse distributor once a completed disposal report is submitted to TDA or as soon as the producer receives a hot test result. The producer is responsible for disposing of noncompliant hemp, or marijuana, according to the DEA-reverse distributor's instructions. Per Texas Agriculture Code §122.356, a person transporting hemp plant material must have a cargo manifest or documentation (transport manifest). TDA expects law enforcement will prefer a transport manifest accompany any shipment of hemp material before processing.

COMMENT 62: A commenter states that rule §24.13(a) for inspection and entry provisions are overreaching and unnecessary. The commenter recommended that TDA's rules be revised to track the IFR.

AGENCY RESPONSE: TDA appreciates the comment and is mindful of the concerns of licensees. However, TDA declines to revise its rules based on this comment. TDA is committed to working with licensees and stakeholders to ensure that inspections are conducted in a reasonable and minimally invasive manner. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The hemp plant is also essentially physically identical to marijuana plants. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. TDA further notes that its entry and inspections rules are reasonable and necessary and are mandated by provisions of the Texas Agriculture Code which authorize TDA to enter onto and randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with the law. The Texas Agriculture Code further authorizes the Texas Department of Public Safety ("DPS") to inspect and collect samples and mandates that license holders are required to allow - and to provide written consent to - TDA, DPS, and any other state or local law enforcement agency to enter on to all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with the Texas Agriculture Code or TDA rules.

COMMENT 63: A commenter requests TDA to create an internal, multi-tiered appeal process within TDA that must be exhausted prior to resorting to any formal adjudicatory proceedings, and clarify that before any penalties under the Texas Agriculture Code are assessed or whenever a person believes s/he has been adversely affected by a TDA decision, such appeal process should be followed.

AGENCY RESPONSE: Rule §24.38 provides an appeals process in accordance with Texas state law. TDA therefore declines to revise its rules in response to this comment. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 64: A commenter requests clarification on a "corrective action plan".

AGENCY RESPONSE: As stated in rule §24.33, the license holder is responsible for submitting the corrective action plan to TDA. Based upon a stated breach of law or rule, a corrective action plan provides proof of and

explains how past actions or omissions were compliant with law and regulation, and/or how future activities will comply with law and regulation. TDA will review and approve/disapprove corrective action plans on a case by case basis.

COMMENT 65: A commenter recommends for TDA to limit the number of violations per license holder to one per season per license holder. The commenter also recommends for TDA to allow a suspended license holder to mitigate crop damage. The commenter also recommends TDA modify language related to the revocation of a license.

AGENCY RESPONSE: The agency declines to make changes at this time. The rules related to enforcement are consistent with 7 C.F.R. §990.

COMMENT 66: One commenter requests that rule §24.33(d), which provides for the issuance of corrective actions plans and for enforcement for negligently producing hemp or cannabis, be revised to include an additional step prior to license revocation. The commenter also requests that rule §24.36, relating to license revocation, be revised to limit application to circumstances when a "Key Principal" of a license holder or the "License Holder" itself engages in prohibited conduct.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. The Texas Agriculture Code, federal law, and the USDA IFR requires each USDA-approved State or Tribal plan to contain rules providing for the correction of negligent violations and TDA's rules were developed to incorporate those requirements. Rule §24.33(d) provides a license holder an opportunity to submit a corrective action plan prior to revocation of its license. Rules §24.33 and §24.36 are reasonable and necessary to comply with Texas state law, the federal guidelines contained in the IFR, and to protect the safety and welfare of the public. Revocation of a license under either rule would be subject to review under existing, established Texas law, thereby affording recognized, appropriate due process. As previously noted, hemp is a unique crop that has the potential to turn into a controlled substance. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public. Texas law and the IFR provide that persons with a State or Federal felony conviction related to a controlled substance are restricted from participating in the Texas hemp plan for 10 years. The IFR further requires states to immediately notify authorities if a producer violates a state plan with a culpable mental state greater than negligence.

COMMENT 67: A public commenter requests that Subchapter H regarding Transportation, be more specific information on whether or not there is a timeframe to submit a request for a manifest to transport any material.

AGENCY RESPONSE: TDA anticipates that transport manifests will be issued promptly upon receipt by TDA of all information relevant to a request for a transport manifest.

COMMENT 68: A commenter requests modification or deletion of rule §24.39(a) requiring a transport manifest for the transport of hemp outside a facility where hemp is produced.

AGENCY RESPONSE: The agency declines to modify or delete this rule. Texas Agriculture Code §122.356 requires a person transporting hemp plant material to have a cargo manifest or documentation (transport manifest).

COMMENT 69: Commenters object to the ban on bringing into Texas cannabis plants germinated outside Texas, as stated in rule §24.42(a), stating how this prohibition would harm the growth of the industry by limiting access to plant material.

AGENCY RESPONSE: The agency agrees and has modified rule §24.42. Cannabis plants germinated outside Texas may enter Texas with a valid transport manifest issued by another state, U.S. territory, or Indian Nation under its USDA approved hemp plan, the federal hemp plan, or an existing 2014 Farm Bill program, and a phytosanitary certificate in accordance with Title 4 of the Texas Administrative Code Chapter 19.

COMMENT 70: A commenter requests that rule §24.39(b), which requires out-of-state hemp transported in Texas to be accompanied by "valid documentation authorized by another state, Indian Nation, or U.S. territory," be revised to provide for an alternative set of documentation that would be deemed valid and/or authorized for hemp transported from an out-of-state government that does not provide any government-authorized hemp documentation.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Pursuant to Federal law, hemp may only be commercially grown under a USDA approved state or tribal plan or under a USDA plan, which require documentation of the production and destruction of hemp. The Texas Agriculture Code requires documentation indicating the provenance of out-of-state hemp and a statement that it was lawfully produced. Rule §24.39 simply restates Texas law and requires valid documentation that hemp was produced lawfully.

COMMENT 71: A commenter requests a revision of rule §24.43 which prohibits the transportation of hemp plant material with any other cargo that is not hemp material. The commenter believes this prohibition is too stifling and restrictive.

AGENCY RESPONSE: TDA declines to revise its rules based on this comment. Texas Agriculture Code §122.356(b)(1) prohibits the transportation of hemp plant material with any other cargo that is not hemp material. TDA notes that hemp is a unique crop that has the potential to turn into a controlled substance. The hemp plant is also essentially physically identical to marijuana plants. The cultivation of hemp is regulated pursuant to state and federal law as necessary to protect the safety and welfare of the public.

COMMENT 72: One commenter requests that rule §24.45, pertaining to the sale, possession, or purchasing of hemp seed, be revised for clarification. Specifically, the commenter requested clarification of whether vendors located out-of-state must possess a Texas license and a revision regarding the length of time that records of hemp seed sales must be retained.

AGENCY RESPONSE: TDA appreciates the comment and agrees to change rule §24.45 to clarify that vendors located out-of-state are not required to possess a Texas license. TDA has further changed rule §24.45 to clarify that records of hemp seed sales must be retained for five years.

COMMENT 73: A commenter asks when TDA will issue the certification process for certifying hemp seed pursuant to rule §24.44.

AGENCY RESPONSE: Hemp seed certification will be done in accordance with standard certification rules and procedures in accordance with Chapters 10 and 62 of the Texas Agriculture Code.

COMMENT 74: A commenter asks if Texas hemp seed producers have input in the hemp seed certification process.

AGENCY RESPONSE: Producers will be able to have input through traditional procedures such as the Texas Seed Board.

COMMENT 75: A commenter asks when the initial list of approved seed providers will be issued.

AGENCY RESPONSE: TDA is currently preparing a list and it will be available on TDA's website in mid-March, 2020.

COMMENT 76: A commenter asks when the requirements for seed certification will be issued.

AGENCY RESPONSE: The requirements for seed certification are currently issued and are the requirements by seed boards to certify seed that are already in place.

COMMENT 77: Commenters request TDA to allow private entities to also produce hemp for research purposes under a hemp research license.

AGENCY RESPONSE: The agency declines to make changes at this time but will consider this matter in future rulemaking. Private hemp researchers can do hemp research under a producer's license, following law and rule, and disposing of any noncompliant hemp according to DEA requirements.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§24.1 - 24.4

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

§24.1. Definitions.

Words used in this chapter in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this chapter, unless the context otherwise requires, the following terms shall mean:

- (1) "Act" means Texas House Bill 1325, relating to the production and regulation of hemp in Texas, as codified in Chapters 121 and 122 of the Code.
- (2) "Acceptable hemp THC level" means a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, in 7 U.S.C. §1639o(1) and Texas Agriculture Code §121.001, nor the definition of "marihuana," in 21 U.S.C. §802(16) and in Texas Health and Safety Code §481.002(26).
- (3) "Administrative action" includes a denial, revocation or suspension of a license, or an assessed penalty.
- (4) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Department's hemp program.
- (5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- (6) "Certified or Approved hemp seed" means seed that meets the legal standards for seed quality and labeling required by Texas and federal law, the legal standards of the jurisdictions from where the seed is originally sold and produced, and the additional hemp seed quality and labeling requirements required by the Department.
- (7) "Contiguous" means all of the lots in or on a location owned or controlled by one owner or tenant, or the same owner and tenant, and no lot is separated from the other lots on the location by different ownership or control, or a public right of way, a navigable waterway, or an area greater than sixty feet.
- (8) "Controlled Substance" is defined in Tex. Health & Safety Code §481.002(5). The term does not include hemp, as defined by Tex. Agric. Code §121.001, or the tetrahydrocannabinols in hemp.

(9) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal

disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.

(10) "Corrective action plan" means a plan established by the Department for a licensed hemp producer to correct a negligent violation or non-compliance with the hemp program, this chapter, or other state or federal statute. Based upon a stated breach of law or rule, a corrective action plan provides proof of and explains how past actions or omissions were compliant with law and regulation, and/or how future activities will comply with law and regulation.

(11) "Criminal History" means the results of a criminal background investigation conducted by the Department.

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

(13) "Cultivate" as defined by Tex. Agric. Code §122.001(1) means to plant, irrigate, cultivate or harvest a hemp plant.

(14) "Days" means business days unless otherwise specified.

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

(16) "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.

(17) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9-THC and THC are interchangeable.

(18) "Department or TDA" means the Texas Department of Agriculture.

(19) "Drug Enforcement Administration or DEA" means the United States Drug Enforcement Administration.

(20) "DPS" means the Texas Department of Public Safety.

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

(22) "Entity" means a corporation, general partnership, joint stock company, association, limited partnership, limited liability partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization. The term entity includes a domestic or foreign entity defined in Texas Business Organizations Code §1.002 that will be, or proposes to be, in hemp production within the State of Texas.

(23) "Facility" means a location with a legal description and is within the legal control of a person or entity. A facility may consist of multiple fields, greenhouses, storage, and/or lots.

(24) "Farm Service Agency or FSA" means an agency of the United States Department of Agriculture.

(25) "Field" means an outdoor area of land consisting of one or more lots on which the producer will produce or store hemp.

- (26) "Final test" means the last Department-authorized laboratory test conducted from a final sample collected.
- (27) "Final sample" means the last Department-authorized sample collected from a lot.
- (28) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (29) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object. This includes GPS coordinates.
- (30) "Greenhouse" means any indoor structure consisting of one or more lots on which the producer will produce or store hemp.
- (31) "Governing person" has the meaning assigned by Tex. Bus. Orgs. Code §1.002.
- (32) "GPS" means Global Positioning System.
- (33) "Handle" as defined by Tex. Agric. Code §122.001(3) means to possess or store a hemp plant on premises owned, operated, or controlled by a license holder for any period of time, or in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated or controlled by a license holder to a premises owned, operated or controlled by another license holder, or a person licensed under Tex. Health & Safety Code, Chapter 443. "Handle" also means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- (34) "Harvest" means to cut, gather, take, or remove all or part of the cannabis plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, processing, storage, sale, or any other use. "Harvest" does not include transplants from one lot to another lot if both lots are within the same license holder's control, and the plants are transplanted according to the hemp program rules and procedures.
- (35) "Hemp" or "industrial hemp" as defined Tex. Agric. Code §121.001 means the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (36) "Hemp research license" means a license issued to an institution of higher education to produce or handle hemp for research purposes.
- (37) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
- (38) "Information sharing system" means the database which allows the Department to share Texas hemp program information with federal and state agencies.
- (39) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.
- (40) "Key participants" means a sole proprietor, a partner in a general partnership, a general partner in a limited partnership, or a person with executive managerial control in an entity. A person with executive managerial control includes persons such as a trustee, independent or dependent executor or administrator of an estate, chief executive officer, managing member, manager, president, vice president, general partner, chief operating officer and chief financial officer, or their equivalents. This definition does not include non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of an entity.

- (41) "Law enforcement agency" means any federal or Texas law enforcement agency.
- (42) "License" as defined by Tex. Agric. Code §122.001(6) means a hemp producer, handler, or sampler license issued by the Department.
- (43) "License holder" as defined by Tex. Agric. Code §122.001(7) means an individual or business entity holding a license.
- (44) "License holder who transplants" means a license holder who cultivates cannabis plants for the purpose of transplanting all living parts of those same cannabis plants according to Department rules and procedures.
- (45) "Lot" means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- (46) "Lot permit" means a document issued by the Department authorizing a license holder to produce or handle a hemp crop within a lot.
- (47) "Marijuana or marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term "marihuana" does not include hemp and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
- (48) "Measurement of Uncertainty (MU)" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (49) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this chapter.
- (50) "Nonconsumable hemp product" as defined by Tex. Agric. Code §122.001(8) means a product that contains hemp, other than a consumable hemp product as defined by Tex. Health & Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.
- (51) "Person" means an individual or entity, unless otherwise indicated.
- (52) "Phytocannabinoid" means the Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).
- (53) "Postdecarboxylation" means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.
- (54) "Processing" means converting an agricultural commodity into a marketable form.
- (55) "Produce" means to cultivate hemp plants in Texas.

(56) "Producer" means a person who produces hemp. A producer includes an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm or facility, or would have shared had the crop been produced. A producer includes a grower of hybrid seed. A producer also means a person who stores the hemp plants they produced within Department-registered locations.

(57) "Program or hemp program" means the process created by the state of Texas and federal statutes and regulations to facilitate the regulation and cultivation of hemp as a crop.

(58) "Reverse distributor" means a person who is registered with the DEA in accordance with 21 C.F.R. §1317.15 to dispose of marijuana.

(59) "Sample" means a composite, representative portion from one variety of hemp plants in a hemp lot, collected prior to harvest in accordance with Department guidelines and procedures.

(60) "Sample collection date" means the date a hemp sample is collected by the Department or an authorized entity. To determine the sample collection date, the Department may take into consideration events of force majeure or unusual circumstances, including situations beyond a reasonable person's control.

(61) "Sampler" means a person or entity authorized by the Department to conduct the sampling and collection of hemp plants.

(62) "Signing authority" means an individual of a sole proprietorship, or an officer or agent of an entity with written authorization to commit the entity to a binding agreement or verify the contents of a governmental document.

(63) "Specimen" means a cutting taken from a hemp plant for the purposes of sample collection.

(64) "Storage" means any structure or container, whether temporary or permanent in nature, in which the producer or handler will store hemp. "Storage" does not include containers used to deliver samples.

(65) "The Code" means the Texas Agriculture Code.

(66) "Transplant" means to move a fully germinated seedling, mature plant, cutting, or clone from one lot and to replant it in another permanent lot under the control of the same license holder, for later harvest by the same license holder. "Transplant" also means a plant, cutting, or clone that has been moved from its initial lot of germination or cultivation for the purpose being transplanted.

(67) "Transport manifest" includes a shipping certificate, cargo manifest or transport document developed by the Department or a U.S authority, authorizing transport of a hemp product within the State of Texas, any other state, the United States of America, or its territories.

(68) "TPIA" means the Texas Public Information Act, Texas Government Code, Chapter 52.

(69) "Unique ID" means the unique identifier established by the Department's hemp program.

(70) "USDA" means the United States Department of Agriculture.

(71) "U.S. authority" means the United States of America, USDA or a sub-agency thereof, a state, a US territory, or an Indian Nation, or federal, state or local law enforcement agency.

§24.2. Information Submitted to the United States Secretary of Agriculture.

(a) Not more than thirty (30) days after receiving and compiling the following information, the Department shall provide to the United States Secretary of Agriculture, or the Secretary's designee, the following information

related to Department-licensed producers, in accordance with the Department's Information Gathering and Sharing Procedure:

- (1) full name of individual or entity, residential or principal business address, telephone number, email address, name and title of each key participant of the entity, and employer identification number, if applicable;
 - (2) street address, and to the extent practicable, geospatial location for each production location where hemp will be produced in Texas;
 - (3) acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp;
 - (4) the total acreage of hemp planted, or square footage for greenhouses, harvested and if applicable, disposed; and
 - (5) the status and license number of the license holder.
- (b) The Department shall provide real-time updates to USDA for all information that it reports to USDA under this rule, 7 C.F.R. §990.3, or 7 C.F.R. §990.70.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. FEES

4 TAC §§24.5 - 24.7

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

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SUBCHAPTER C. LICENSING

4 TAC §§24.8 - 24.19

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

§24.8. License Application.

- (a) Any person who wishes to produce, handle, or sample and collect hemp at any location in the State of Texas shall submit to the Department annually a completed license application in a form prescribed by the Department.
- (b) A person who does not hold a valid license from the Department shall not produce, handle, or sample and collect hemp within the State of Texas.
- (c) An applicant shall pay the required annual fee for each application, renewal or modification of a license.
- (d) A license shall not be issued unless:
 - (1) the application is submitted online to the Department;
 - (2) the application is complete and accurate;
 - (3) the applicant has completed a Department mandatory orientation course;
 - (4) the applicant for a sampler license has completed an additional Department sampling and collection training course;
 - (5) the applicant has paid all required fees, in the amounts established by the Department or statute;
 - (6) the applicant's criminal history confirms that all key participants covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018;
 - (7) the application contains no false statements or misrepresentations and the applicant has not previously submitted an application with any false statements or misrepresentations; and
 - (8) the applicant's hemp license has not been terminated or suspended.
- (e) Each applicant shall provide the following information for each license application:

- (1) full name, Texas address, telephone number, and email address;
 - (2) if the applicant is submitting an application on behalf of an entity, the full name of the entity, the principal Texas business location address, the full names, titles, addresses, and emails of key participants, the full name, title, and email of the applicant who will have signing authority, and the Texas taxpayer ID number;
 - (3) for a producer or handler license:
 - (A) street address and geospatial location including GPS for each facility where hemp will be cultivated or stored; and
 - (B) proof of ownership or control over the location where hemp will be cultivated or stored; and
 - (4) all other information required by the Department.
- (f) Licenses will not be automatically renewed, and must be renewed annually prior to license expiration. Renewal applications are subject to the same terms, information collection requirements, and approval criteria as required for initial applications.
- (g) A license holder must submit a license modification if there is any change to the information submitted in the application including, but not limited to, sale of a business, a change in or new location of the facility for the production, handling, or storage of hemp in Texas, or a change in the key participants.
- (h) The Department shall notify each applicant by letter or email of the denial or approval of the person's application.

§24.9. Ineligibility for a License.

- (a) A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.
- (b) A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the Department hemp program for a period of five (5) years from the date of revocation. Upon application following the five-year exclusionary period, the Department may deny an application for any lawful reason, including previous conduct that occurred while licensed by the Department, USDA, another state, Indian nation, or U.S. territory.
- (c) A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license, or be a key participant of a license holder, or be a governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.
- (d) A person who falsifies any information contained in a license application to the Department, or has previously submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

§24.10. Criteria for Evaluation of License Application.

- (a) The applicant shall submit a complete application with all required components and attachments.
- (b) The applicant's history with other TDA programs, if any, shall demonstrate a willingness to comply with the Department's rules and instructions from Department staff.
- (c) The applicant does not owe TDA any money under a final order.

(d) The applicant must not have a criminal conviction described in this subchapter.

§24.13. Terms and Conditions for License Holders.

(a) As an initial and continuing condition of licensure under the Department's hemp program, a license holder consents to entry on and inspection of all locations identified in an initial or renewal application, and all land and premises where hemp or other cannabis plants or materials are located. Such consent includes representatives of the Department or U.S. authority, who may enter such location(s), land, and premise(s) with or without cause, and with or without advance notice.

(b) As an initial and continuing condition of licensure under the Department's hemp program, a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15, and without compensation from the State of Texas, USDA or the federal government, any:

- (1) material found in excess of an acceptable hemp THC level;
- (2) plants located in an area that is not licensed by the Department; and
- (3) plants not accounted for in required reporting to the Department.

(c) A license holder shall not sell, assign, loan, transfer, pledge or otherwise dispose of, alienate or encumber a license. A license is not transferrable upon the death of a license holder, except upon the death of a license holder the independent or dependent executor of the deceased license holder may contract with another license holder to cultivate, harvest, handle, test, and convey the hemp crop existing at the time of the license holder's death.

(d) A license holder shall not produce or handle hemp in any location other than the location listed in an initial or renewal application or facility addition or modification request.

(e) A license holder, other than a Hemp Research License Holder, shall not interplant hemp with any other crop without express written permission from the Department.

(f) A license holder shall comply with restrictions established by the Department limiting the movement of hemp plants and plant parts.

(g) A license holder shall ensure that at any time hemp is in transit, whether in intrastate or interstate commerce, a Department issued transport manifest shall be available for inspection upon the request of a representative of the Department, or U.S. authority.

(h) Upon request from a representative of the Department, or U.S. authority, a license holder shall immediately produce a copy of his or her license for inspection.

(i) A license holder shall notify the Department of any interaction with any U.S. authority, within twenty-four (24) hours following such interaction, by telephone call to the Department and follow-up in writing to the Department within three (3) calendar days of the occurrence.

(j) A license holder shall notify the Department of any theft of cannabis materials, whether growing or not, within 48 hours of discovery.

(k) A license holder shall report to the USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA), consistent with USDA requirements:

- (1) their license or authorization number, street address, and facility and lot geospatial location, including all transplantation areas, where hemp is and will be produced;

(2) the acreage dedicated to the production of hemp, or greenhouse indoor square footage dedicated to the production of hemp, and the total acreage or square footage of hemp planted, harvested and if applicable, disposed; and

(3) any change in the facility or lot geospatial location or amount of acreage dedicated to the production of hemp, and any change in the facility or lot geospatial location or amount of greenhouse indoor square footage dedicated to the production of hemp, including the total acreage or square footage of hemp planted, harvested and if applicable, disposed due to said changes.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, shall constitute grounds for appropriate enforcement action including, without limitation, the assessment of administrative penalties, the requirement to undertake corrective action, the denial of an initial or renewal application, the revocation of a license, the referral to other state and federal agencies for civil or criminal action, or any combination of such remedies by the Department.

§24.15. License Holders Who Transplant.

(a) In order to be eligible to transplant cannabis plants, a license holder must acquire a lot permit for the initial area of cultivation and indicate the final transplantation area, and anticipated date of transplant.

(b) The area where a license holder who transplants initially cultivates cannabis plants and the final transplantation area shall constitute one lot with two (2) registered geospatial locations.

(c) A license holder shall not divide a lot from the initial area of cultivation for transplant into more than one (1) transplantation area.

(d) In the event the initial area of cultivation is not within the same facility as the final transplantation area, the license holder who transplants must request a transport manifest from the Department before transporting a lot of cannabis plants to a separate facility for transplanting purposes. A transport manifest shall be valid for five (5) days from the date of issuance.

(e) A sale or transfer of a lot of cannabis plants from a license holder to another license holder for transplant is considered a harvest.

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SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION**4 TAC §§24.20 - 24.23**

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SUBCHAPTER E. TESTING**4 TAC §§24.24 - 24.29**

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*§24.24. Testing Laboratory.***(a) Registration.**

(1) An independent testing laboratory, or a laboratory in an institution of higher education, must be registered with the Department before performing any test related to the Department hemp program.

(2) An independent testing laboratory or a laboratory in an institution of higher education shall submit a complete application for registration in a form prescribed by the Department.

(3) An independent testing laboratory or a laboratory in an institution of higher education must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with DEA.

(b) Registered Laboratories.

(1) A list of Department-registered laboratories shall be available to license holders on the Department website.

(2) A license holder may test a hemp sample using a registered laboratory in accordance with Tex. Agric. Code §122.151(c).

(3) A license holder who uses a registered laboratory shall pay that laboratory's fees.

(c) State of Texas Laboratory.

(1) A license holder may test a hemp sample using a State of Texas Laboratory operated by the Department or its representative (State Laboratory).

(2) The State Laboratory shall be used if the license holder fails to use a registered laboratory.

(3) A license holder shall pay the State laboratory fees.

(4) The State Laboratory shall be registered with DEA.

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SUBCHAPTER F. DISPOSAL

4 TAC §24.30, §24.31

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SUBCHAPTER G. ENFORCEMENT

4 TAC §§24.32 - 24.38

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SUBCHAPTER H. TRANSPORTATION

4 TAC §§24.39 - 24.43

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§24.39. Transport Manifest Required.

(a) A Department-issued transport manifest shall be required for the transportation of hemp outside a facility where the hemp is produced.

(b) Hemp harvested outside of Texas that has no living tissue, transported in Texas, including seed, shall be accompanied by a transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory.

§24.40. Transport Manifests for Test Samples.

A Department-issued transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory, shall accompany all samples collected and transported to a laboratory for testing.

§24.42. Living Tissue Hemp Plants Originating Outside the State of Texas.

No person shall bring into the State of Texas a hemp plant, that originated from cannabis plants germinated, cloned, or transplanted outside of the State of Texas without a valid transport manifest, or other valid documentation authorized by another state, the USDA, Indian Nation, or U.S. territory, and a phytosanitary certificate in accordance with Title 4 of the Texas Administrative Code Chapter 19.

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SUBCHAPTER I. SEED

4 TAC §§24.44 - 24.48

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§24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.

After May 1, 2020, a person or entity may not sell, possess, hold, or purchase hemp seed in Texas unless that person holds a valid and active license issued by the Department for the production and handling of hemp. A person or entity based out-of-state is not required to be a license holder in Texas to sell hemp seed to a person or business entity in Texas, but may not do so unless such hemp seed has been certified or approved in accordance with §24.48 of this title (relating to Certification or Approval of Hemp Seed).

§24.47. Hemp Seed Recordkeeping.

A person who sells, offers to sell, distributes, or uses hemp seed in Texas shall maintain records for five (5) years indicating:

(1) the origin of the hemp seed for five (5) years;

- (2) the person or entity from whom the person purchased the hemp seed;
- (3) any documentation indicating certification or approval of the provenance, quality, and variety of the hemp seed; and
- (4) the location and jurisdiction of origin of the hemp seed.

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SUBCHAPTER J. AGRICULTURAL OR ACADEMIC HEMP RELATED RESEARCH

4 TAC §24.49, §24.50

The adoption is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department. Chapters 12, 121 and 122 of the Code are affected by the adoption.

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CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

The Texas Department of Agriculture (Department) adopts the repeal of Title 4, Part 1, Chapter 30, Subchapter A, Division 3, §30.50, relating to the Community Development Fund, without changes to the text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8135). The repealed rule will not be republished.

The Department also adopts new Subchapter A, Division 3, §30.50, relating to the Community Development Fund, with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8135). The adopted new rule will be republished. The adopted rule incorporates minor edits to clarify language, formalizes existing policy and guidelines, and includes revisions of necessary policy and administrative changes to further enhance operations.

The 38-day comment period ended February 3, 2020. The Department held two public hearings regarding the rules during the public comment period. During this period, the Department received written or oral comments from the following: City of Bowie; City of Canadian; City of Canyon; Carson County; Cottle County; Montague County; Ochiltree County; Alamo Area Council of Governments; Texas Association of Regional Councils; Association of Rural Communities in Texas; GrantWorks, Inc.; and Langford Community Management.

A summary of comments relating to the new rule and the Department's responses follow.

Comment: Seven commenters preferred no changes to the existing Regional Review Committee (RRC) system or requested consideration of an alternative similar to the current RRC that still streamlines the administrative burden. Six commenters identified concerns of this new scoring system, including decreased local control and the inability of a state-wide committee to understand regional differences in local needs, culture and geography. One commenter supported the state-wide scoring system as an improvement that will benefit the entire state.

Response: The Department appreciates the input received and has carefully considered these concerns both before and after publishing the proposed rule. The agency has incorporated specific measures to ensure regional representation in the scoring process and preserve the project priorities that are critical to each region's needs. No changes to the rule have been made as a result of these comments.

Comment: Six commenters requested clarification of the membership requirements for the Unified Scoring Committee. Five requested confirmation that one member will be appointed to represent each state planning region, and one commenter requested that nominations for membership also be accepted from persons not nominated by the state planning region.

Response: The adopted rule incorporates minor edits to clarify the nomination process.

Comment: Four commenters requested to increase the number of points assigned for Regional Project Priorities.

Response: The Department reviewed the use of Project Priorities in the most recent application cycle. The assignment of points under the new rule is generally consistent with the Project Priority points assigned by RRCs. No changes to the rule have been made as a result of these comments.

Comment: Five commenters expressed concern about potential criteria that may be adopted by the new committee, including barriers to entry, matching funds, and financial resources.

Response: The Department recognizes this concern and recommends the commenters and other concerned community members communicate clearly with the members of the Unified Scoring Committee (USC) the impact that certain scoring criteria will have on their community's ability to compete for grant funds. No changes to the rule have been made as a result of these comments.

Comment: Four commenters suggested including language regarding the amount of funding allocated to each region and/or each grant amount.

Response: The funding allocation formula and the maximum and minimum grant amounts are included in the State of Texas One Year Action Plan submitted to the U.S. Department of Housing and Urban Development. It is not necessary to also include such language in the Texas Administrative Code. No changes to the rule have been made as a result of these comments.

Comment: One commenter expressed concern regarding the potential conflict of interest for state planning regions that administer grant contracts and will have a formal role under the new rule.

Response: The Department has considered this concern and has determined that the role of state planning regions is limited and thus should cause no possible conflict. No changes to the rule have been made as a result of these comments.

4 TAC §30.50

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

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4 TAC §30.50

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

§30.50. Community Development (CD) Fund.

(a) Eligibility. In addition to meeting the application threshold requirements in §30.25 of this subchapter (relating to Application Threshold Requirements), in order to be eligible to apply for community development funds, a community must document that at least 51.00% of the persons who would directly benefit from the implementation of each activity and target area proposed in the application are of low to moderate income.

(b) Application cycle. Applications are accepted on a biennial basis and selected for award pursuant to regional competitions held during the first year of the biennial cycle. An eligible community may submit one application

per cycle as prescribed in the most recent application guide for this fund.

(c) Regional allocations. Each state planning region is provided with a regional CD Fund allocation for each program year of the biennial cycle once HUD releases the state's annual CDBG allocation.

(d) Selection procedures.

(1) Initial review. Upon receipt of an application, the department performs an initial review for application completeness and eligibility in accordance with §30.29 of this subchapter (relating to Application Review). Only the department may disqualify an application from consideration.

(2) Scoring process. During the first program year of the application cycle, eligible applications are scored and ranked by the department using criteria determined by the state planning region, the Unified Scoring Committee, and the department as described in subsection (e) of this section.

(3) Awards. After the department determines the final rankings of applications, awards are made based on each region's allocation and awarded until funds allocated to the region are depleted. If the program year allocation is insufficient to completely fund the next highest ranked application in the region, projects may be funded using TxCDBG deobligated funds or other funds, to the extent available. The department may also pool the remaining funds from each region to maximize the total number of applications to be fully funded.

(e) Scoring criteria.

(1) Regional project priority category. Each state planning region, as defined by Chapter 391 of the Local Government Code, is responsible for establishing the project types that will be considered first, second, or third priority projects.

(A) The governing body of the state planning region shall establish the priorities and communicate the decision to the department or may appoint a committee to carry out these tasks.

(B) Public meeting. The public must be given an opportunity to comment on the project priorities to be considered. The designated committee must convene in an open meeting for discussion and action to adopt project priorities.

(i) Notice of the public meeting must be advertised to the general public through a regional newspaper or other similar media. Each community eligible to participate in the application cycle must also be contacted directly with written notice of the public meeting.

(ii) The public meeting is subject to the Texas Open Meetings Act.

(C) The department will provide a format for establishing the criteria and a deadline for submitting the regional decision to the department to be incorporated into the application guide.

(D) State planning regions that use internal staff to prepare applications and administer CDBG grants must address the potential conflicts of interest of regional participation in selecting project priorities. For these regions, staff responsible for any part of the grant application process:

(i) may not participate in the planning or administration of the public meeting or committee duties, including distributing public meeting notices, explaining public meeting requirements to committee members, conducting the committee meeting, or submitting the results of the committee to the department; and

(ii) may attend the public meeting but may not present recommendations to the committee except during the public comment portion of the meeting, subject to the same time limits applied to other commenters.

(E) Twenty-five percent of the total available points will be determined by regional project priority categories.

(2) Department scoring criteria. The following factors are considered by the department when scoring CD Fund applications (detailed application and scoring information are available in the application guidelines):

(A) Past performance--the department will consider a community's performance on all previously awarded TxCDBG contracts within the past 4 years preceding the application deadline. Evaluation of a community's past performance will include the following:

- (i) completion of contract activities within the original contract period;
- (ii) submission of environmental review requirements within prescribed deadlines;
- (iii) submission of the required close-out documents within the period prescribed for such submission; and
- (iv) maximum utilization of grant funds awarded.

(B) Other programmatic priorities--the department may establish other scoring criteria to meet programmatic goals, so long as the application cycle allows sufficient time after the publication of such scoring criteria for communities to take action to maximize their score.

(C) Ten percent of the total available points will be determined by department scoring criteria.

(3) Unified Scoring Committee (USC) criteria. The USC is responsible for determining objective scoring factors for all regions in accordance with the requirements of this section and the current TxCDBG Action Plan. The USC must establish the numerical value of the points assigned to each scoring factor as described in the Committee Guidelines provided by the department.

(A) USC composition. The Agriculture Commissioner will appoint each member of the USC, to serve at the discretion of the Commissioner.

- (i) Twenty-four (24) members shall be appointed to the USC. The Commissioner shall ensure geographic representation for each state planning region when appointing members.
- (ii) Each member must be either an elected or appointed official of a non-entitlement community at the time of appointment.
- (iii) The governing body of each state planning region may nominate one individual to be considered for appointment. The department will establish a timeline for such nominations.

(B) Public hearing. The public must be given an opportunity to comment on the scoring criteria considered. The department will convene a public hearing for the USC to discuss and select the objective scoring criteria that will be used to score and rank applications within each region.

(i) Notice of public hearing. USC proceedings are subject to the Texas Open Meetings Act. The department will publish notice of the hearing in the *Texas Register*; post the notice on its website, and announce the hearing details through the CDBG email listserv that is available for all stakeholders.

(ii) Attendance at meetings. A quorum is required for the USC public meeting. A USC member may designate a proxy to attend the meeting. Proxies are counted for purposes of determining the presence of a quorum and may participate in the discussion regarding potential scoring criteria but may not vote on matters before the USC.

(C) Requirements for scoring criteria.

(i) All scoring criteria selected by the USC must be in compliance with 24 CFR §91.320(k)(1)(i), which states in relevant part, "The statement of method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it, understand what criteria and information their application will be judged, and be able to prepare responsive applications."

(ii) Prior to the scheduled USC public hearing, the department will publish a list of previously approved scoring criteria that comply with objective scoring requirements. The department will also provide an opportunity for USC members, communities, and other stakeholders to submit additional scoring criteria to the department to be reviewed for compliance prior to the public hearing.

(iii) The USC may not adopt scoring factors that directly negate or offset the department's scoring factors.

(D) Final selection of scoring criteria.

(i) The final selection of the scoring criteria is the responsibility of the USC and must be consistent with the requirements of the current TxCDBG Action Plan.

(ii) The department will review the scoring factors selected to ensure that all scoring factors are objective and publish the approved scoring methodology in the application guide. The department may provide further details or elaboration on the objective scoring methodology, data sources, and other clarifying details without the necessity of a subsequent USC meeting.

(E) Sixty-five percent of the total available points will be determined by USC scoring criteria.

(f) Other department responsibilities. The department may:

(1) establish the maximum number of USC scoring factors that may be used in order to improve review and verification efficiency, or exclude certain scoring factors if the data is not readily available or verifiable in a timely manner. To ensure consistency, the department may determine the acceptable data source for a particular scoring factor;

(2) establish a deadline for each state planning region to select and submit to the department its project type priorities and nomination for the USC;

(3) publish Committee Guidelines to assist the USC in selecting scoring criteria that meet federal, state and program requirements:

(A) For any region for which no project priorities are submitted, applications will be scored according to the priorities published in the Committee Guidelines.

(B) In the event the USC fails to approve an objective scoring methodology to the satisfaction of the department consistent with the requirements in the current TxCDBG Action Plan, the department will establish scoring factors using the scoring factors identified in the Committee Guidelines; and

(4) make a site visit to recommended application localities.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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