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**1. Definitions**

- 1.1 Performance-based sampling – methods for sampling and testing hemp which allows for less than 100% of all hemp lots planted in the state to be sampled and tested by the Department.
- 1.2 Department – Michigan Department of Agriculture and Rural Development.
- 1.3 Confidence level of 95% - high confidence that no more than 1% of the plants in each lot would produce noncompliant hemp plants.
- 1.4 College or university – defined in PA 220 as “a college or university described in section 4, 5, or 6 of article VIII of the state constitution of 1963 or a junior college or community college described in section 7 of article VIII of the state constitution of 1963.”
- 1.5 Harvest - the act of gathering an industrial hemp lot, collecting viable seed, or moving a lot from a location disclosed on the grower registration to an undisclosed location. “Harvest” does not include:
  - a. Gathering for disposal or remediation.
  - b. Collecting and moving or shipping official regulatory samples.
  - c. Collecting and moving or shipping samples for compliance monitoring.
  - d. Collecting and moving or shipping to a location owned, operated, or leased by the same grower for purposes of planting.
  - e. Collecting and moving or shipping samples to a facility for research purposes only such as crop yield or cannabinoid analyses.
- 1.6 PA 220 – Public Act 220 of 2020, the Industrial Hemp Growers Act, as amended.
- 1.7 Standard sampling – every lot and every grower is sampled and tested by the Department.

**2. Background**

- 2.1 The Department’s preharvest sampling procedure requires standard sampling of every lot of hemp prior to harvest in accordance with USDA’s Final Rule, 7 CFR Part 990.3, and Public Act 220 of 2020, the Industrial Hemp Growers Act. However, both the Final Rule and Act allow states to develop performance-based sampling approaches that ensure the confidence level as defined above and that a representative sample is collected that represents a homogenous composition of the lot.
- 2.2 The performance-based sampling policy discussed in the approved hemp production plan is expanded upon here specifically for college and university researchers and is in accordance with Part 990.3(a)(2)(iii)(A) and (B):



*(A) The alternative method must be part of the State or Tribe’s hemp plan and is subject to USDA approval.*

*(B) The alternative method must have the potential to ensure, at a confidence level of 95 percent, that the Cannabis plant species Cannabis sativa L. that will be subject to the alternative method will not test above the acceptable hemp THC level. The alternative method may consider one or more of the following factors:*

*(1) Seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe;*

***(2) Whether the producer is conducting research on hemp;***

*(3) Whether a producer has consistently produced compliant hemp plants over an extended period of time; and*

*(4) Factors similar to those in this paragraph (a)(2)(iii)(B).*

2.3 This document also reflects USDA’s requirements for their licensees in 7 CFR Part 990.21(d):

*(d) Licensing for research.*

*(1) Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research and does not enter the stream of commerce is not subject to the sampling requirements in §§ 990.24 and 990.26; provided that the producer adopts and carries out a USDA approved alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species Cannabis sativa L. that will be subject to this alternative method will not test above the acceptable hemp THC level.*

*(2) USDA licensees shall ensure the disposal of all non-compliant plants in accordance with § 990.27. Only research institutions registered with DEA to handle marijuana can keep hemp that tests over the 0.3 acceptable hemp THC level until the end of the study.*

*(3) USDA licensees shall comply with the reporting requirements in § 990.71 including reporting disposal of noncompliant plants.*

2.4 PA 220 currently lumps college and university researchers with all hemp growers; provisions for performance-based sampling are not effective until PA 547 is repealed (MCL333.29801). As a matter of policy, MDARD will allow for alternative methods of sampling and testing as described below and in the plan.

### 3. Purpose/Scope

3.1 The Department’s approved Performance-Based Sampling plan allows for reduced sampling for specific types of crops planning to be harvested to enter the stream of commerce, including sprouts, microgreens, hemp greens, immature plants (clones/transplants), mother plants, certified seed for fiber and grain varieties, and research. Future iterations may include performance-based sampling for cannabinoid varieties. This document does not exclude college and university research from participating in these other types of performance-based sampling.



3.2 The Department maintains authorities as described in PA 220 of 2020, as amended, to inspect facilities, collect records and samples, and test samples to ensure compliance with the acceptable THC level, regardless of whether performance-based sampling or standard sampling are utilized.

#### 4. Hemp Lots That Are Not Harvested

- 4.1 If harvesting activities are not performed (see definition), then preharvest sampling is not required by PA 220 nor USDA.
- 4.2 Researchers must ensure hemp lots are not abandoned. As such, unharvested hemp must be disposed of within 15 days after determining the lot will not be harvested or within 15 days of the conclusion of its use for research as determined by a college or university researcher (archival samples may be maintained beyond this timeframe as determined by the research protocol).
- 4.3 Additional PA 220 requirements remain even for unharvested hemp, including: lot posting, specific data reporting to the Department, reporting to FSA, receipt record maintenance, and notification of disposal/disposal reports for noncompliant lots.

#### 5. College and University Hemp Researchers

View Figure 1 for a visual diagram of standard and performance-based sampling options.

##### 5.1 Grower Registration for Colleges and Universities Conducting Hemp Research

- 5.1.1 The principal investigator (PI) must be registered as a hemp grower with the Department. Multiple PIs may be registered at an institution.
- 5.1.2 The Department will not collect fees for Hemp Grower Registrations or Site Modifications issued to a college or university hemp researcher if the project is for research only **and** the hemp does not enter commerce.

##### 5.2 Hemp Research Lots to be Harvested and Intended for Commerce

Colleges and universities performing industrial hemp research must allow for the collection of official hemp samples and total delta-9-THC testing by the Department as required under chapter IV of PA 220 for any hemp that will be harvested to enter the stream of commerce. Alternative sampling and testing methods offered for researchers (8.0) does not apply here, but, the researcher can still review other performance-based sampling options for specific crops as noted (3.1) above and in the approved state hemp plan.

##### 5.3 Hemp Research Lots to be Harvested and Not Entering Commerce

- 5.3.1 As discussed above, research hemp that will be harvested and will NOT be entering commerce is eligible for alternative sampling and testing methods not performed by the state.
- 5.3.2 USDA's final rule allows for alternative sampling and testing methods so that researchers do not need to pay the state for official regulatory sampling and testing for each variety and lot grown. That alternative method must meet the performance-based sampling conditions that have been approved by USDA in the state's hemp plan.



- 5.3.3 Any college or university research lot shall only be eligible for performance-based sampling consideration if the registered grower maintains records documenting the variety's compliance with the acceptable THC concentration.
- 5.3.4 If the researcher would like to implement an alternative sampling and testing plan ("plan"), the researcher can apply to the Department to [MDARD-IndustrialHemp@Michigan.gov](mailto:MDARD-IndustrialHemp@Michigan.gov) no later than 3 weeks prior to their first anticipated harvest date of the season by providing a plan that includes:
  - a. The scope of the research and proposed procedures for cultivation, harvesting, sampling, testing, and disposal. Timeframe for the research must be stated.
  - b. Confirmation that all research locations where hemp will be grown or handled, including greenhouses, fields, processing/storage areas, and labs, were identified on the registration application or if not, included with the plan.
  - c. Identification of name, address, phone number, and Hemp Registration Number of each grower not employed by the college or university that will be utilized for growing hemp for the research. Note that these registered growers are also responsible for following all PA 220 requirements including but not limited to recordkeeping and disposal of research lots.
  - d. A statement acknowledging that the hemp cannot enter the stream of commerce.
  - e. A statement acknowledging that the Department may conduct inspections, investigations, and sampling to ensure compliance with PA 220 and the researcher's plan.
  - f. A statement that the researcher will :dispose of all noncompliant hemp in accordance with Section 407 of PA 220 by completing disposal via routes described in the Act; provide a Notice of Intent to Dispose to the Department; and, if not witnessed by the Department, provide a Notice of Disposal for all hemp disposed of, which includes photographic evidence for verification. Disposal steps are outlined [here](#).
  - g. A statement that compliant hemp must be disposed of within 15 days of the conclusion of its use as research plants, except for archival samples. The notification process noted above does not need to be completed for compliant hemp. However, a disposal record must be maintained.
  - h. A statement that the researcher will follow PA 220 requirements for recordkeeping, record retention, and field/greenhouse posting.
  - i. The plan must state that the researcher will follow USDA Farm Service Agency reporting requirements for crop acreage reporting. Per the FSA, crops not entering the stream of commerce are not required to be broken down by lot (variety) on the acreage report (a campus could be considered one lot), and the planting date can be reported as the average planting date if lots were planted over multiple dates. Find more information [here](#). Local FSA offices should allow reporting, even if the college or university cannot participate in cost-share or insurance programs, since reporting is a federal requirement for all hemp growers. Contact the Department should reporting be an issue.



- j. The plan must state that the researcher will allow THC test results to be reviewed by the Department upon request, consistent with PA 220 authority. Since under this scenario plants are NOT entering commerce, the researcher can utilize any lab testing facility including their own. Note the USDA requires labs to be DEA-registered after December 31, 2022 when performing official regulatory testing for THC compliance prior to harvesting (or for remediation confirmation) but grants college and university researchers more leeway by not requiring official testing (from MDARD in this case) when plants do not enter commerce. However, note that researchers may wish to speak with their legal counsel about testing hemp because if the *Cannabis* is tested and found to be noncompliant, the researcher is now handling marijuana. Per USDA, many universities obtain DEA registration due to concern of losing federal funding.

5.3.5 Note that 7.4.5, 7.4.6, 7.4.8 through 7.4.10 do not differ from PA 220 requirements for all hemp growers.

5.3.6 The Department will review the plan for compliance with this document and the state's hemp production plan and issue an approval, required modifications, or denial within 10 business days.

5.3.7 Plans must be submitted annually for consideration.

#### 5.4 Additional Comments

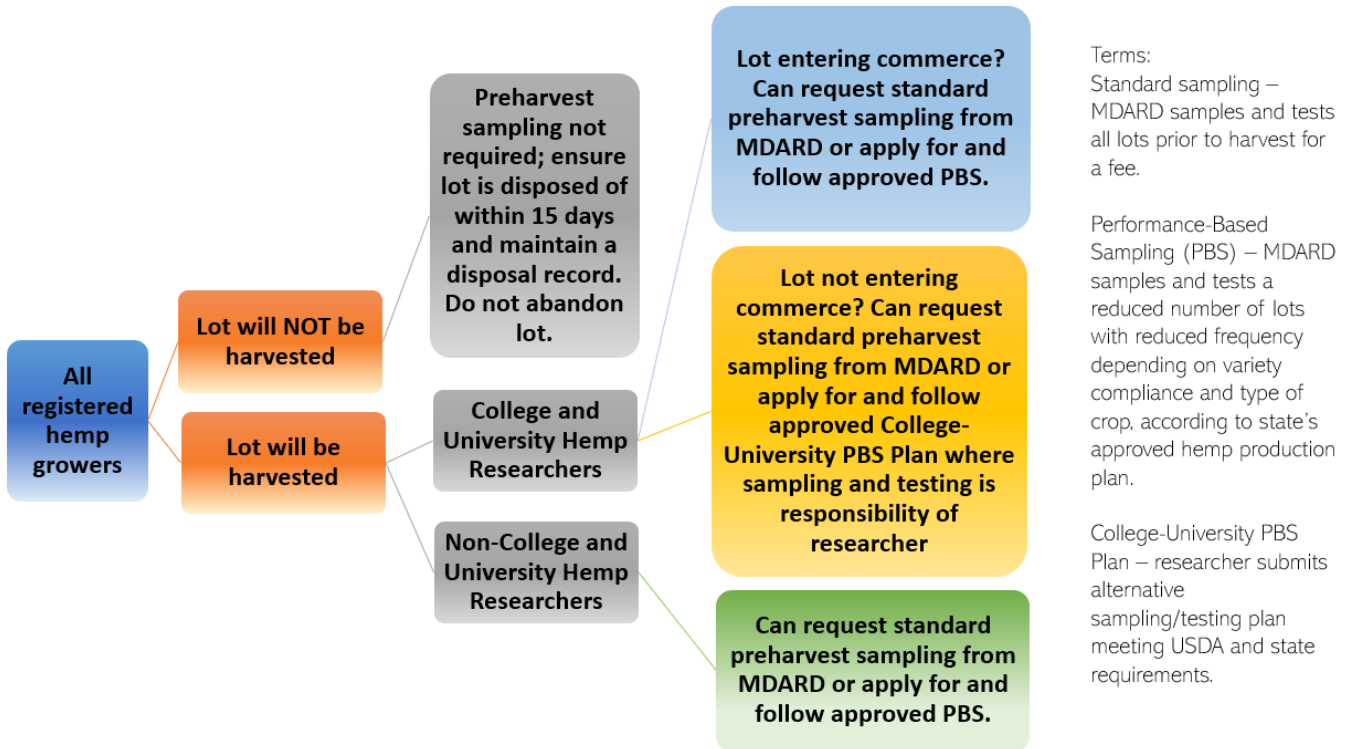
5.4.1 The Department maintains authority to inspect college and university researchers with hemp grower registrations in the same capacity as other hemp growers. Researchers can expect to participate in grower inspections held every 1 to 3 years where operating practices, adherence to any approved alternative sampling/testing plans, test reports, disposal records, and other required records will be reviewed.

5.4.2 Although the Department must assess a negligent violation should research lots exceed 1% delta-9-THC in accordance with USDA's final rule and PA 220, the Department may use discretion in developing a Corrective Action Plan for the college or university.

5.4.3 Tribal colleges may have interest in conducting hemp research. Per USDA's final rule, states or Indian Tribes desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian tribe can submit a hemp production plan for USDA approval or participate in USDA's own plan. 7 CFR 990.1 includes a definition of "Territory of the Indian Tribe."



Figure 1: Diagram of options for hemp growers with respect to performance-based sampling, harvesting, and entrance into the stream of commerce.



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1.0	I	7/29/22	New policy
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Date:	7/29/2022		
Document Owner:	Molly Mott		
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\*D: Draft, I: Initial, R: Revision, C: Cancel