

INDUSTRIAL HEMP GROWERS ACT

Act 220 of 2020

AN ACT to create an industrial hemp program; to authorize certain activities involving industrial hemp to require the registration of persons engaged in certain activities; to provide for the sampling and testing of industrial hemp; to provide for the collection of fees; to create certain funds; to provide for the powers and duties of certain state departments and officers and state agencies and officials; to prohibit certain acts; to prescribe civil sanctions; and to repeal acts and parts of acts.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

The People of the State of Michigan enact:

CHAPTER I

General Provisions

333.29101 Short title.

Sec. 101. This act shall be known and may be cited as the "industrial hemp growers act".

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29103 Definitions.

Sec. 103. As used in this act:

(a) "Acceptable THC level" means the application of the measurement of uncertainty to the reported total delta-9-THC concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less total delta-9-THC.

(b) "Applicant" means a person that submits an application for a registration.

(c) "Cannabis" means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not.

(d) "Compliance monitoring testing facility" means a laboratory that meets both of the following requirements:

(i) Is registered with the DEA to conduct chemical analysis of controlled substances under 21 CFR 1301.13.

(ii) Performs routine compliance monitoring testing of unofficial hemp samples throughout the growing season.

(e) "Controlled substance felony" means a felony violation of the laws of any state having to do with controlled substances or a felony violation of federal law having to do with controlled substances.

(f) "Conviction" means a plea of guilty or nolo contendere, or a finding of guilt related to a controlled substance felony, unless 1 of the following applies:

(i) The finding of guilt is subsequently expunged.

(ii) The finding of guilt is set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged.

(iii) The individual is pardoned.

(g) "Corrective action plan" means a plan created under section 601.

(h) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(i) "Criminal history report" means a report that meets all of the following requirements:

(i) Is prepared by the United States Federal Bureau of Investigation or another authority approved by the department.

(ii) Includes fingerprint-based criminal history record information.

(iii) Is completed not more than 60 days before an application is submitted under section 201.

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

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

(l) "Department" means the department of agriculture and rural development.

(m) "Designated sampling agent" means a federal, state, or local law enforcement agent authorized by the department to collect official samples under section 401.

(n) "Dispose" means an activity that transitions industrial hemp into a nonretrievable or noningestible form of industrial hemp under section 407.

(o) "Dry weight basis" means the ratio of the amount of moisture in cannabis to the amount of solid in cannabis.

(p) "Dwelling" means a house, building, tent, trailer, vehicle, or other shelter that is occupied in whole or

in part as a home, residence, living place, or sleeping place for 1 or more individuals either permanently or transiently, or any portion thereof.

(q) "Fund" means the industrial hemp fund created in section 107.

(r) "Good standing" means all fees or fines owed under this act are paid and there are no outstanding fees or fines owed to the department.

(s) "GPS coordinates" means latitude and longitude coordinates derived from a global positioning system that are taken from a central point within a growing area or structure and that include decimal degrees to 6 places after the decimal.

(t) "Grow" or "growing", unless the context requires otherwise, means to plant, propagate, cultivate, or harvest live plants or viable seed. Grow or growing includes drying and storing harvested industrial hemp, possessing live industrial hemp plants or viable seed on a premises where the live industrial hemp plants or viable seed are grown, growing industrial hemp for the purposes of conducting research, and selling harvested industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act. Grow or growing does not include selling an intermediary, in-process, or finished industrial hemp product or smokable hemp flower.

(u) "Grower" means a person that is required to be registered under section 201.

(v) "Industrial hemp" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(w) "Industrial hemp plan" means the plan created under section 105.

(x) "Key participant" means a person that has a direct or indirect financial interest in the person or business producing hemp or a person in a corporate entity at an executive level that is regularly responsible for decision making impacting the growing of industrial hemp. A key participant includes, but is not limited to, any of the following:

(i) For a sole proprietorship, a sole proprietor.

(ii) For a partnership, a partner.

(iii) For a corporation, an individual with executive managerial control including, but not limited to, a chief executive officer, a chief operating officer, or a chief financial officer.

(y) Key participant does not include positions such as farm, field, or shift managers.

(z) "Lot" means either of the following:

(i) A contiguous area in a field, greenhouse, or other indoor growing area that contains the same variety or strain of cannabis throughout.

(ii) A farm, tract, field, or subfield as these terms are defined in 7 CFR 718.2.

(aa) "Marihuana" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(bb) "Measurement of uncertainty" 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 the measurement.

(cc) "Negligence" means the failure to exercise the level of care that a reasonably prudent person would exercise in the same or similar circumstances.

(dd) "Noncompliant industrial hemp" means industrial hemp that is not in compliance with this act or the rules promulgated under this act.

(ee) "Official hemp sample" means a sample of an industrial hemp lot that is collected by a designated sampling agent under section 401 in accordance with department sampling protocols and is tested by a regulatory testing facility.

(ff) "Percentage of THC on a dry weight basis" means the percentage, by weight, of THC in cannabis after excluding the moisture from the cannabis.

(gg) "Person" means an individual, partnership, corporation, association, college or university, or other legal entity.

(hh) "Postdecarboxylation test" means a test of cannabis for delta-9-THC after a carboxyl group is eliminated from delta-9-THC acid.

(ii) "Program" means the industrial hemp program established by this act.

(jj) "Registration" means a grower registration granted under this act.

(kk) "Regulatory testing facility" means a laboratory that meets all of the following requirements:

(i) Is registered with the DEA.

(ii) Is authorized to conduct chemical analysis of controlled substances pursuant to 21 CFR 1301.13.

(iii) Meets the requirements under section 403.

(iv) Conducts testing of official hemp samples.

(ll) "Remediate" means an activity that transitions noncompliant industrial hemp into industrial hemp that is in compliance with this act and the rules promulgated under this act under section 407.

(mm) "THC" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(nn) "Total delta-9-THC" means the total available tetrahydrocannabinol measured as the sum of delta-9-tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol acid reported on a dry weight basis.

(oo) "Unofficial hemp sample" means a sample of industrial hemp collected by a grower for routine compliance monitoring testing throughout the growing season for testing by a compliance monitoring testing facility.

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

(qq) "Variety" means a subdivision of a species that has the following characteristics:

(i) The subdivision is uniform, in the sense that variations between the subdivision and other subdivisions in essential and distinctive characteristics are describable.

(ii) The subdivision is distinct, in the sense that the subdivision can be differentiated by 1 or more identifiable morphological, physiological, or other characteristics from all other known subdivisions.

(iii) The subdivision is stable, in the sense that the subdivision will remain uniform and distinct if reproduced.

(rr) "Viable seed" means seed that has a germination rate of greater than 0.0%.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021;—Am. 2021, Act 58, Eff. Oct. 11, 2021

333.29105 Industrial hemp program; USDA approval.

Sec. 105. (1) The department shall establish, operate, and administer an industrial hemp program.

(2) The department shall develop and submit to the USDA for approval an industrial hemp plan for this state that complies with 7 USC 1639o to 1639s. Upon approval, the department shall use the industrial hemp plan to implement the program.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29107 Industrial hemp fund.

Sec. 107. (1) The industrial hemp fund is created within the state treasury.

(2) The state treasurer may receive the fees collected under section 511 for deposit into the fund. The state treasurer may also receive money or other assets from any other source for deposit into the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(4) The department is the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund to establish, operate, and enforce the program.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER II

Application and Registration

333.29201 Grower registration; application; requirements.

Sec. 201. (1) A person shall not grow industrial hemp in this state unless the person is a grower.

(2) A person applying for a registration under this section shall do so on an application and in a manner provided by the department. The applicant shall include with the application all of the following information:

(a) The applicant's full name, date of birth, mailing address, telephone number, and electronic mail address. If the applicant is not an individual, the application must include the EIN number of the applicant and for each key participant, his or her full name, date of birth, title, and electronic mail address.

(b) The total acreage and greenhouse or other indoor square footage where industrial hemp will be grown.

(c) The address and legal description of and GPS coordinates for each field, greenhouse, building, or other location where industrial hemp will be grown.

(d) Maps depicting each field, greenhouse, building, or other location where industrial hemp will be grown that indicate entrances, field boundaries, and specific locations corresponding to the GPS coordinates provided under subdivision (c).

(e) A criminal history report for the applicant, or, if the applicant is not an individual, a criminal history report for each key participant.

(3) The department shall grant an applicant described in this section a registration to grow industrial hemp if the applicant does all of the following:

- (a) Submits a completed application under subsection (2).
- (b) Pays the applicable fees under section 511.
- (c) Meets the qualifications for registration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29211 Initial registration; expiration; renewal; nontransferability.

Sec. 211. (1) An initial registration granted by the department under this act expires at midnight on January 31 immediately following the date on which the registration is granted.

(2) Other than a registration granted under subsection (1), a registration is valid for 1 year beginning on February 1 and expiring at midnight on the following January 31.

(3) To renew a registration, an applicant must do all of the following:

- (a) Submit an application on a form and in a manner provided by the department.
- (b) If the application is submitted on or before January 31, pay the registration fee under section 511.
- (c) If an application is submitted after January 31, pay the registration fee under section 511 and a late fee of \$250.00.

(4) If an applicant provides express written consent to disclose personal information on an application, the applicant's name, email address, and telephone number may be disclosed to a grower, a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or a processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801. If the applicant does not provide express written consent to disclose personal information on the application, any information submitted by the applicant to the department on the application is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. This subsection does not apply to the disclosure of personal information to a law enforcement agency.

(5) A registration is nontransferable.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29213 Denial of application; notification.

Sec. 213. (1) The department shall approve or deny an application for a registration within 120 days after the completed application is submitted.

(2) The department shall deny an application for a registration if any of the following apply:

- (a) The application is incomplete.
- (b) If the applicant is an individual, the applicant is under the age of 18.
- (c) The applicant's location for growing industrial hemp is not located in this state.
- (d) The applicant has not demonstrated, as determined by the department, a willingness to comply with this act or rules promulgated under this act.
- (e) The applicant has unpaid fees or civil fines owed to this state under this act.
- (f) The applicant has made a false statement or representation, as determined by the department, to the department or a law enforcement agency.
- (g) The applicant had a registration revoked in the immediately preceding 5-year period.
- (h) The applicant or, if the applicant is not an individual, a key participant of the applicant was convicted of a controlled substance felony in the immediately preceding 10-year period. This subdivision does not apply if both of the following conditions are met:

(i) The applicant or key participant grew industrial hemp before December 20, 2018, as a pilot program participant under the agricultural act of 2014, Public Law 113-79.

(ii) The applicant's or key participant's conviction occurred before December 20, 2018.

(3) If the department denies an application because it is incomplete, the department shall notify the applicant of the denial within 120 days after the application is submitted, by letter or by electronic mail, and state the deficiency and request additional information.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29215 Documentation of registration.

Sec. 215. The department shall issue a document to a grower that evidences the granting of a registration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29217 Appeal of denied application; hearing.

Sec. 217. (1) If the department denies an application for a registration, the applicant may appeal the denial

by submitting a written request for a hearing to the department. The applicant must submit the request to the department not more than 15 days after the date of the denial.

(2) The department shall conduct a hearing requested under this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER III Grower Registration

333.29301 Report to USDA Farm Service Agency; grower duties.

Sec. 301. (1) After a grower is granted a registration under chapter II and not more than 60 days before the grower plants any industrial hemp, the grower shall report the following information to the USDA Farm Service Agency:

(a) The address and total acreage of and GPS coordinates for each field, greenhouse, building, or other location where industrial hemp will be grown.

(b) The grower's registration number.

(2) A grower shall do all of the following:

(a) Allow the department or a law enforcement agency to enter onto and inspect all premises where industrial hemp is or will be located, with or without cause and with or without advance notice.

(b) On request from the department or a law enforcement agency, produce a copy of the grower's registration for inspection.

(c) Contact the department to collect an official hemp sample under section 401.

(d) Harvest the industrial hemp lot within 30 days after an official hemp sample is collected under section 401.

(e) Dispose of or remediate under section 407, without compensation, any industrial hemp lot determined to be noncompliant under section 405.

(f) Dispose of the following, without compensation, under section 407:

(i) Industrial hemp that is at a location that is not disclosed on the grower's application under section 201.

(ii) Industrial hemp that is grown in violation of this act.

(g) Report all of the following information to the department by November 30 of each year:

(i) Total acreage of industrial hemp that the grower grew in the immediately preceding growing season.

(ii) Total acreage of industrial hemp that the grower harvested in the immediately preceding growing season.

(iii) Total acreage of industrial hemp that the grower disposed of in the immediately preceding growing season.

(h) Use only a compliance monitoring testing facility to test unofficial hemp samples for compliance monitoring to determine whether the industrial hemp is in compliance with this act.

(i) If the department is inspecting or investigating a complaint, the grower or the grower's authorized agent must be present and do all of the following:

(i) Allow the department to have access to all structures directly related to the production of industrial hemp including, but not limited to, a barn, machine shed, greenhouse, or storage area.

(ii) Provide business records including books, accounts, records, files, and any other documents in print or electronic media that the department determines is relevant or necessary for the inspection or investigation.

(iii) Allow a law enforcement agency to accompany the department during an inspection or investigation.

(iv) Allow the department to collect official hemp samples for the purpose of completing an inspection or investigation.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29303 Prohibitions on grower.

Sec. 303. A grower shall not do any of the following:

(a) Grow industrial hemp that is not in compliance with the grower's registration.

(b) Grow industrial hemp in a location that is not disclosed on the grower's application under section 201.

(c) Grow industrial hemp in a location that is not owned or completely controlled by the grower. As used in this subdivision, "completely controlled" means to be solely responsible for all of the industrial hemp grown at a location.

(d) Grow industrial hemp in a dwelling.

(e) Grow a variety of industrial hemp that is on the list created under section 505.

(f) Sell or transport, or permit the sale or transport of, viable industrial hemp plants or viable seed.

(g) Harvest industrial hemp before an official hemp sample is collected under section 401.

(h) Sell raw industrial hemp to a person in this state that is not licensed as a processor-handler under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or as a processor under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, as authorized under this act.

(i) Dispose of industrial hemp without submitting a notice of intent to dispose to the department under section 407(6)(a). This subdivision does not apply to a grower that disposes of industrial hemp affected by poor health, pests, disease, or weather or to prevent cross-pollination of male or hermaphrodite industrial hemp plants.

(j) Sell an intermediary, in-process, or finished industrial hemp product or smokable hemp flower, unless the grower is licensed as a processor-handler under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or as a processor under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29305 Sign posting requirements.

Sec. 305. (1) A grower shall post signage in a conspicuous location at each boundary line of each location where industrial hemp is grown. The signage must include all of the following:

(a) The statement, "Industrial Hemp Registered with the Michigan Department of Agriculture and Rural Development".

(b) The grower's name.

(c) The grower's registration number.

(2) The signage described under subsection (1) must meet all of the following requirements:

(a) Be a minimum of 8 inches by 10 inches.

(b) Use print that is clearly legible and not smaller than 3/8 inch tall.

(c) Be made of weather-resistant material.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29307 Record of sale of raw industrial hemp.

Sec. 307. A grower shall provide a record of sale of raw industrial hemp to a processor-handler licensed under the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, or a processor licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801. The record of sale must contain all of the following information:

(a) The name and license number of the processor-handler or processor purchasing the industrial hemp.

(b) The total weight of industrial hemp purchased.

(c) The total sale price of the industrial hemp.

(d) The date of the sale.

(e) The certified report of the total delta-9-THC testing under section 405 for each variety of industrial hemp purchased.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29309 Maintenance of records.

Sec. 309. (1) A grower shall maintain records that contain all of the following information:

(a) Each record of sale generated under section 307.

(b) The name and mailing address of any person from whom the grower purchased viable industrial hemp.

(c) The name of each variety of industrial hemp the grower grows.

(d) Evidence that the information required to be reported under section 301 was submitted and received by the USDA Farm Service Agency.

(e) A notice of disposal generated under section 407(6)(b), if applicable.

(2) A grower shall maintain the records under subsection (1) for 5 years and make the records available to the department on request.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29311 Growing locations; approval required.

Sec. 311. (1) Before implementing a modification to a growing location listed in a registration, the grower must submit a growing location modification request on a form provided by the department and the required fee under section 511, and obtain written approval from the department.

(2) The department shall not approve a growing location modification request under this section unless the

grower has paid the growing location modification fee in full.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29313 Sale of industrial hemp to processor.

Sec. 313. A grower may sell industrial hemp to a processor that is licensed under the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER IV

Sampling, Testing, and Disposal

333.29401 Harvesting of industrial hemp crop; sampling requirements.

Sec. 401. (1) A grower that intends to harvest an industrial hemp lot shall contact the department not more than 30 days or less than 20 days before the grower's anticipated harvest to collect an official hemp sample of each lot of industrial hemp grown. A designated sampling agent shall collect an official hemp sample before the grower's anticipated harvest, and the grower or the grower's authorized representative must be present.

(2) When a designated sampling agent collects an official hemp sample, the grower shall provide the designated sampling agent with complete and unrestricted access to both of the following during normal business hours:

(a) All cannabis.

(b) All acreage, greenhouses, indoor square footage, fields, buildings, or other locations, including any location listed in the application under section 201, where cannabis is growing or stored.

(3) The department shall transport or cause to be transported an official hemp sample collected under this section to a regulatory testing facility for total delta-9-THC testing under section 403.

(4) A grower that requests the collection of an official hemp sample under this section must be in good standing. An official hemp sample will not be collected until any outstanding fee or fine under this act is paid.

(5) A grower may collect an unofficial hemp sample and submit the unofficial hemp sample to a compliance monitoring testing facility for compliance monitoring at any time to determine whether the industrial hemp is in compliance with this act.

(6) The department may use performance-based sampling that allows for reduced or no regulatory sampling of specific certified seed, varieties yielding consistently compliant hemp, lots used for academic research by a college or university, historical performance of the grower, or other factors, which have the potential to ensure at a confidence level of 95% that no more than 1% of the plants in each lot would be noncompliant.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29403 Regulatory testing facility or compliance monitoring testing facility; requirements; duties; report.

Sec. 403. (1) A regulatory testing facility that performs total delta-9-THC testing must do all of the following:

(a) Adopt a laboratory quality assurance program that ensures the validity and reliability of the total delta-9-THC test results.

(b) Adopt an analytical method selection, validation, and verification procedure that ensures that the total delta-9-THC testing method is appropriate.

(c) Demonstrate that the total delta-9-THC testing ensures consistent and accurate analytical performance.

(d) Adopt method performance selection specifications that ensure that the total delta-9-THC testing methods are sufficient to detect the total delta-9-THC as required under this act.

(e) Report the measurement of uncertainty on the certified report of the total delta-9-THC test.

(f) Adopt a total delta-9-THC testing method that includes a postdecarboxylation test or other similar method.

(2) A compliance monitoring testing facility or regulatory testing facility that performs total delta-9-THC testing shall do both of the following:

(a) Ensure that an official hemp sample or unofficial hemp sample is not commingled with any other official hemp sample or unofficial hemp sample.

(b) Assign a sample identification number to each official hemp sample or unofficial hemp sample.

(3) A regulatory testing facility or compliance monitoring testing facility shall report all of the following information to the grower for each test performed:

(a) The grower's full name and mailing address.

- (b) The grower's registration number.
- (c) Each sample identification number assigned under subsection (1)(h).
- (d) The testing facility's name and DEA registration number, if applicable.
- (e) The date the total delta-9-THC testing was completed.
- (f) The total delta-9-THC.
- (4) The requirement for regulatory testing facilities and compliance monitoring testing facilities to be registered with the DEA is effective on December 31, 2022.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

Compiler's note: In subsection (3)(c), the reference to "subsection (1)(h)" evidently should read "subsection (2)(b)".

333.29405 Testing results; certified report; harvesting timeline.

Sec. 405. (1) If the results of the total delta-9-THC test of an official hemp sample indicate a total delta-9-THC concentration of not more than the acceptable THC level, the regulatory testing facility shall provide to the grower and the department a certified report that states the results of the total delta-9-THC test.

(2) If the results of the total delta-9-THC test of an official hemp sample indicate a total delta-9-THC concentration that is greater than the acceptable THC level, the regulatory testing facility shall provide the grower and the department a certified report that states the results of the total delta-9-THC test, and the grower must dispose of or remediate the noncompliant industrial hemp lot under section 407.

(3) A grower shall harvest an industrial hemp lot within 30 days after an official hemp sample is collected under section 401. If the grower is unable to harvest the industrial hemp lot within the 30-day period because of any of the following, the grower may submit a request to the department to collect a second official hemp sample under section 401:

- (a) Weather.
- (b) Agricultural practices.
- (c) Equipment failure.
- (d) Any other reason approved by the department.

(4) A second official hemp sample collected under subsection (3) must be tested under section 403, and the grower must harvest the remaining industrial hemp lot within 30 days after the second official sample is collected under section 401. A grower shall not request the department to collect a second official sample for testing under subsection (3) unless both of the following apply:

- (a) The grower is in good standing with the department.
- (b) The request to collect a second official sample is not for the purpose of delaying the harvest to increase cannabinoid concentration.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29407 Destruction or remediation of noncompliant hemp; timeline; methods; grower duties; exceptions.

Sec. 407. (1) A grower that receives a certified report under section 405(2) shall, within 30 days after receiving the certified report, dispose of the noncompliant hemp lot under subsection (2) or remediate the noncompliant industrial hemp lot under subsection (3).

(2) Except as provided in subsection (8), a grower shall dispose of a noncompliant industrial hemp lot using 1 of the following methods:

- (a) Plowing under using a curved plow blade to rotate the subsoil to the surface and bury the industrial hemp below the subsoil.
- (b) Mulching, disking, or composting the industrial hemp and blending the industrial hemp with existing soil, manure, or other biomass material.
- (c) Mowing, deep burial, or burning.

(3) Except as provided in subsection (8), a grower shall remediate a noncompliant industrial hemp lot using 1 of the following methods:

- (a) Removing all of the floral material and disposing of the floral material under subsection (2).
- (b) Shredding the industrial hemp plant into a biomass-like material.
- (4) If a grower remediates a noncompliant industrial hemp lot under subsection (3), the grower shall contact the department to collect an official hemp sample of the industrial hemp lot under section 401. The official hemp sample must be tested by a regulatory testing facility under section 403. If the results of the total delta-9-THC test indicate a total delta-9-THC concentration of not more than the acceptable THC level, the grower must harvest the industrial hemp lot within 30 days after the official hemp sample is collected under section 401. If the results of the total delta-9-THC test indicate a total delta-9-THC concentration that is greater than the acceptable THC level, the grower must dispose of the industrial hemp lot under subsection

(2). The regulatory testing facility shall provide the grower and the department a certified report that states the results of any total delta-9-THC test completed under this subsection.

(5) The industrial hemp disposed of under subsection (2) must be rendered nonretrievable or noningestible.

(6) A grower that disposes of industrial hemp under subsection (2) shall do both of the following:

(a) Submit a notice of intent to dispose to the department at least 48 hours before disposing of the industrial hemp. The grower shall submit the notice of intent to dispose on a form and in a manner provided by the department.

(b) Submit a notice of disposal to the department within 48 hours after the industrial hemp is disposed of under subsection (2) that contains all of the following information:

(i) The date of the disposal.

(ii) The method of disposal.

(iii) The total acreage or square footage disposed of.

(iv) The reason for disposal.

(v) Photographic or video evidence of the disposal.

(7) The grower shall allow an agent of the department to be present during any disposal or remediation activities conducted under this section.

(8) Industrial hemp that is disposed of for any of the following reasons is not subject to the disposal requirements under this section:

(a) Poor health.

(b) Pests.

(c) Disease.

(d) Weather.

(e) To prevent cross-pollination of male or hermaphrodite industrial hemp plants.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29409 Effective date of Chapter IV.

Sec. 409. The provisions of this chapter are effective beginning November 1, 2020.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER V

Administration

333.29501 Rules.

Sec. 501. The department may promulgate rules to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29503 Department reporting requirements.

Sec. 503. (1) By the first of each month, the department shall report all of the following to the USDA:

(a) For each grower, the information provided on an application submitted under section 201.

(b) Each grower's registration number.

(c) The status of each grower registration.

(d) Any changes or updates to a grower's information provided under subdivision (a).

(e) An indication that there were no changes or updates to the reports previously submitted under this subsection, if applicable.

(f) The date for which the information contained in subdivisions (a), (b), (c), and (d) is current.

(g) The period covered by the report.

(2) If a grower is required to dispose of an industrial hemp lot under section 407, by the first of each month, the department shall report all of the following to the USDA:

(a) The information provided on the grower's application submitted under section 201.

(b) The grower's registration number.

(c) The total acreage or square footage of industrial hemp that was disposed of.

(d) The date on which the industrial hemp was destroyed.

(3) Not later than December 15 of each year, the department shall report all of the following information to the USDA:

(a) The total acreage of industrial hemp that was grown in the immediately preceding growing season.

(b) The total acreage of industrial hemp that was harvested in the immediately preceding growing season.

(c) The total acreage of industrial hemp that was disposed of in the immediately preceding growing season.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29505 List of prohibited industrial hemp varieties; website; enforcement response policy.

Sec. 505. (1) The department may create and maintain on its website a list of prohibited industrial hemp varieties.

(2) The department shall develop an enforcement response policy for use under chapter VI. The enforcement response policy must provide for consideration and application of all of the following factors:

- (a) Whether a grower has committed 1 or more violations under chapter VI.
- (b) The severity of a violation under chapter VI.
- (c) Whether a person has had previous contact with the department about violations or attempted violations under chapter VI.
- (d) Past enforcement actions under chapter VI.
- (e) Any other circumstances as determined by the department.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29507 Application maintenance.

Sec. 507. The department shall maintain an application submitted under section 201 for 5 years.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29509 Official regulatory testing facility.

Sec. 509. (1) The department's laboratory is the official regulatory testing facility for testing official hemp samples under chapter IV.

(2) The department may contract with a third-party laboratory to conduct the testing of official hemp samples under chapter IV. A third-party laboratory must meet all of the following requirements:

- (a) Be registered with the DEA.
- (b) Meet the standards under chapter IV.
- (c) Provide copies of any certified report that states the results of a total delta-9-THC test completed under section 403 to the department within 24 hours after the total delta-9-THC test is completed.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29511 Grower fees.

Sec. 511. (1) A grower is subject to the following fees, as applicable:

- (a) A registration fee of \$1,250.00.
- (b) A growing location modification fee of \$50.00 for each growing location modification request form submitted under section 311.
- (2) A grower shall pay a fee required under this act at the time an application is submitted under section 201 or at the time the growing location modification request form is submitted under section 311. The fee must be paid using a method prescribed by the department.
- (3) A fee required under this act is nonrefundable and nontransferable.
- (4) A grower shall pay a fee charged for total delta-9-THC testing under chapter IV within 15 days after receiving the invoice. A fee under this subsection is limited to the reasonable costs of conducting the testing.
- (5) A grower shall pay a fee charged for the collection of an official hemp sample within 15 days after receiving the invoice. A fee under this subsection is limited to the reasonable costs of collecting the official hemp sample.
- (6) The department may refer a fee charged under subsection (4) or (5) that remains unpaid for more than 180 days to the department of treasury for collection.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29513 Local rule, regulation, code, or ordinance; prohibited.

Sec. 513. A political subdivision of this state shall not adopt a rule, regulation, code, or ordinance that restricts or limits the requirements under this act.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

333.29515 Annual inspection.

Sec. 515. The department shall conduct an annual inspection of randomly selected growers to verify that industrial hemp is grown in compliance with this act.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020.

CHAPTER VI
Violations and Penalties

333.29601 Negligent violations of this act; notice; corrective action plan; penalties.

Sec. 601. (1) A grower negligently violates this act if the grower does any of the following:

(a) Fails to provide a legal description for each field, greenhouse, building, or other location where industrial hemp will be grown under section 201.

(b) Fails to obtain a registration.

(c) Grows industrial hemp that exceeds the acceptable THC level but does not have more than 1.0% total delta-9-THC on a dry weight basis.

(d) Any other violation that the department determines is negligent under subsection (7).

(2) If a grower violates subsection (1), the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan.

(3) The department shall develop a corrective action plan under subsection (2) or (7) that includes the following terms:

(a) A reasonable date by which the grower will correct the negligent violation.

(b) A requirement that for not less than 2 years after a violation under subsection (1), the grower shall make periodic reports to the department about the grower's progress and compliance with the requirements of the corrective action plan.

(4) A grower that negligently violates this act 3 times in a 5-year period is ineligible to register as a grower for 5 years from the date of the third violation.

(5) A negligent violation under this section is not subject to criminal enforcement.

(6) A grower is not subject to more than 1 negligent violation under subsection (1) per growing season.

(7) In addition to a negligent violation listed in subsection (1), the department may determine that any other violation of this act is a negligent violation. If the department determines that a grower negligently violated this act, the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan. The department shall use the enforcement response policy created under section 505 to determine whether a violation of this act is a negligent violation.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29602 Violations of this act.

Sec. 602. Except for a negligent violation under section 601(1), a person violates this act if the person does any of the following:

(a) Intentionally grows or is in possession of cannabis with a total delta-9-THC content greater than the acceptable THC level.

(b) Makes a false or misleading statement, as determined by the department, to the department or a law enforcement agency.

(c) Fails to comply with an order from the department or a law enforcement agency.

(d) Materially falsifies information required under section 201.

(e) Commits any other violation of this act, a rule promulgated under this act, or an order issued under this act.

History: Add. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29603 Investigations; registration suspension; notice.

Sec. 603. (1) If a grower violates or is suspected of violating section 602(a), (b), (c), or (e), the department shall investigate and may suspend the grower's registration for not more than 60 days.

(2) If the department suspends a registration under this section, the department shall notify the grower in writing that the registration is suspended.

(3) If a registration is suspended under this section, the grower shall not harvest or remove industrial hemp from the location where the industrial hemp was located at the time the department issued the notice of suspension, except as authorized in writing by the department.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29605 Revocation of registration; hearing; suspension removal; effect on other registrations.

Sec. 605. (1) The department shall not permanently revoke a registration suspended under section 603

unless the department notifies the grower of the allegation against the grower and gives the grower an opportunity for a hearing to appeal the revocation.

(2) The department shall schedule a hearing on a revocation under subsection (1) for a date as soon as practicable that is not more than 60 days after the date of notification of a registration suspension.

(3) The department shall conduct the hearing required under this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) If the department finds by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall revoke the registration. The revocation is effective immediately, and the department or a law enforcement agency must order the grower to dispose of all cannabis that is in the grower's possession under section 407.

(5) The department or a law enforcement agency shall not compensate or indemnify the value of the cannabis that is destroyed or confiscated under this section.

(6) If the department revokes a registration, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date on which the registration was revoked.

(7) If the department does not find by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall remove the suspension imposed under section 603 within 24 hours of the department's determination.

(8) If a grower commits a violation under section 602(a), (b), (c), or (e) 3 times within a 5-year period, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date of the grower's third violation.

(9) A suspension, revocation, or denial of a registration of a person who is an individual may result in the suspension, revocation, or denial of any other registration held or applied for by that individual under this act. The registration of a corporation, partnership, or other association may be suspended when a registration or registration application of a partner, trustee, director or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29607 Violation of MCL 333.29602; misdemeanor.

Sec. 607. A grower that commits a violation under section 602 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29609 Violation of MCL 333.29601 or 333.29602; administrative fine and penalties; civil action; affirmative defense.

Sec. 609. (1) A grower that commits a violation under section 601 or 602 may be subject to an administrative fine. On the request of a person to whom an administrative fine is issued, the department shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall impose an administrative fine authorized under this section as follows:

(a) For a first violation, an administrative fine of not less than \$100.00 or more than \$500.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(b) For a second violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than \$500.00 or more than \$1,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(c) For a third or subsequent violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than \$1,000.00 or more than \$2,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(2) A grower that commits a violation under section 602(d) is ineligible to participate in the program.

(3) In addition to imposing an administrative fine under subsection (1), the department may do any of the following:

(a) Issue a cease and desist order, either orally or in writing. The department must inform the grower of the reasons for the cease and desist order. A cease and desist order issued under this subdivision is effective immediately, and failure to comply may subject the grower to an administrative fine under subsection (1).

(b) Bring an action to enjoin a violation or attempted violation under section 602 in the county in which the violation occurs or is about to occur.

(c) Bring a civil action to restrain, by temporary or permanent injunction, a violation under section 602. The action may be brought in the circuit court for the county where the violation occurred. The court may issue a temporary or permanent injunction and issue other equitable orders or judgments.

(4) The attorney general may file a civil action for a violation under section 602. A person that commits or

attempts to commit a violation under section 602 may be ordered to pay a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from a grower that committed or attempted to commit a violation under section 602. Money recovered under this subsection must be forwarded to the state treasurer for deposit into the fund.

(5) A decision of the department under this section is subject to judicial review as provided by law.

(6) The department shall advise the attorney general of the failure of any person to pay an administrative fine imposed under subsection (1). The attorney general shall bring an action to recover the fine.

(7) Any administrative fine, investigation costs, or recovery of an economic benefit associated with a violation that is collected under this section must be paid to the state treasury and deposited into the fund.

(8) A person that violates this act is liable for all damages sustained by a purchaser of a product sold in violation of this act. In an enforcement action, a court may order, in addition to other sanctions provided by law, restitution to a party injured by the purchase of a product sold in violation of this act.

(9) As an affirmative defense to any action filed under this section, in addition to any other lawful defense, a grower may present evidence that, at the time of the alleged violation or attempted violation, the grower was in compliance with this act and the rules promulgated under this act.

(10) If the department determines that a grower individually, or by the action of an agent or employee, or as the agent or employee of another, committed a violation under section 602, that did not result in significant harm to public health or the environment, the department may issue a warning instead of imposing an administrative fine under subsection (1).

(11) The applicable provisions of the revised judiciary act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed under this section.

(12) The department shall report to the United States Attorney General, the USDA, and the chief law enforcement officer of this state any violation under this chapter committed with a culpable mental state greater than negligence.

(13) The department shall use the enforcement response policy in determining what actions to pursue under this section.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

CHAPTER VII

Emergency Rule Codification

333.29701 Repealed. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

Compiler's note: The repealed section pertained to growers registered under the industrial hemp research and development act.

CHAPTER VIII

Colleges and Universities

***** 333.29801.added THIS ADDED SECTION DOES NOT TAKE EFFECT UNLESS ACT 547 OF 2014 IS REPEALED. (See enacting section 2 of Act 4 of 2021.) *****

333.29801.added Colleges or universities; growing of industrial hemp for research; requirements; "college or university" defined.

Sec. 801. (1) A college or university that grows industrial hemp for the purpose of conducting research shall do all of the following:

(a) Register as a grower under chapter II.

(b) Collect samples of each lot of industrial hemp and complete a total delta-9-THC test as required under chapter IV. If the college or university adopts alternative methods for collecting a sample and completing a total delta-9-THC test, the college or university does not have to comply with the requirements of chapter IV. A total delta-9-THC test conducted under this subdivision must achieve a confidence level of 95% with respect to the acceptable THC level.

(c) Dispose of noncompliant industrial hemp under section 407.

(2) As used in this section, "college or university" means 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.

History: Add. 2021, Act 4, Eff. (pending).

Compiler's note: Enacting section 2 of Act 4 of 2021 provides:

"Enacting section 2. Section 801 of the industrial hemp growers act, 2020 PA 220, MCL 333.29801, does not take effect unless the industrial hemp research and development act, 2014 PA 547, MCL 286.841 to 286.859, is repealed."

Rendered Monday, November 29, 2021

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