

**CHAPTER 6-13**  
**HEMP REGULATORY CODE**  
(Chapter adopted by NPTEC 4/12/22, NP 21-186 AMENDED)

**PART 1. GENERAL PROVISIONS**

**§6-13-1 Short Title**

This document shall be cited as the “Hemp Regulatory Code.”

**§6-13-2 Findings and Purpose**

The Nez Perce Tribe (Tribe) hereby finds and declares that:

(a) Article VIII, Section 1, Subsection B of the Nez Perce Tribe Constitution authorizes the Nez Perce Tribal Executive Committee (NPTEC), as the governing body of the Tribe, to engage in business activities which promote the economic well-being and advancement of the Tribe and its members.

(b) Industrial Hemp is a valuable agricultural crop and commodity with many traditional and healing properties. Hemp is a strain of Cannabis that has grown naturally in North America. It predates the foundation of the United States of America and continues to grow in the wild. Hemp was historically utilized for a variety of products and functions including paper, cloth, and rope, but its uses have greatly expanded, in more recent times.

(c) The cultivation of Hemp was a staple of American agriculture until it was outlawed through state law, the Marijuana Tax Act in the 1930’s, and the Controlled Substances Act of 1970, 21 U.S.C. § 801 et seq. (“Controlled Substances Act”), because Hemp is derived from the same Cannabis plant as Marijuana.

(d) Prior to the 2018 amendments to the Controlled Substances Act, contained in the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”), the Controlled Substances Act classified Hemp as a Schedule I drug and prohibited any possession or use of Hemp except in the course of federally approved research projects. The Controlled Substances Act also made it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess (with intent to manufacture) Hemp.

(e) The 2018 Farm Bill also amended the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 et seq.) by adding Subtitle G entitled “Hemp Production,” which now allows the Tribe’s controlled cultivation of Hemp in accordance with that Act, and a Tribal Hemp Plan approved by the Secretary of Agriculture.

(f) The Tribe has decided to open specific lands within its jurisdiction to the cultivation, Processing, and distribution of Hemp by ratifying this Plan and submitting it to the United States Department of Agriculture (USDA) for approval.

### **§6-13-3      Scope and Authority**

(a)      The Nez Perce Tribe shall have rulemaking, regulatory and taxing authority over the commerce of, including but not limited to the growth, cultivation, processing, marketing, production, and sale, of hemp and hemp products within its territorial boundaries by any persons.

(b)      Nothing in this Hemp Regulatory Code (Code) or in the license process indicates any guarantee by the Tribe or NPTEC regarding the economic viability of any specific seed, growing method, or hemp product.

(c)      The regulations and penalties imposed by this Code extend to any person within the Tribe's Jurisdiction, whether Licensed or not.

(d)      Nothing in this Code shall be construed to limit the jurisdiction of the Nez Perce Tribe, Tribal Court, or the Tribal Police.

### **§6-13-4      Industrial Hemp as an Agriculture Crop**

Hemp (also referred to as Industrial Hemp) that has no more than 0.3 percent Total Tetrahydrocannabinol (THC) is considered an agriculture crop on the Nez Perce Reservation. The Nez Perce Tribe hereby authorizes the possession, cultivation, transportation, production and use of Industrial Hemp and Hemp products within the territory of the Tribe, when those activities are licensed by the Tribe and conducted in full compliance with the requirements of this Code and applicable law.

### **§6-13-5      Jurisdiction**

(a)      Territories of the Nez Perce Tribe. For purposes of the Hemp Regulatory Code, the Territories of the Nez Perce Tribe includes all lands within the exterior boundaries of the Nez Perce Reservation; all Nez Perce Tribe allotments, located both on and off the Nez Perce Reservation that still possess an Indian title; and, any lands, both on and off the Nez Perce Reservation, title to which is either held in trust by the United States for the benefit of the Nez Perce Tribe, or its members, which remain subject to restriction against alienation and over which the Nez Perce Tribe exercises jurisdiction. The Tribe shall also have jurisdiction over E-commerce transactions emanating from or to the jurisdiction of the Nez Perce Tribe.

(b)      Consensual relations among non-Indians, the Nez Perce Tribe, and enrolled members of the Nez Perce Tribe or any other federally-recognized tribe. Any person who uses land anywhere within the exterior boundaries of the Tribe and any person who enters into agreements or understandings with the Tribe or its members and residents by commercial dealings, contracts, leases, licenses, permits, intergovernmental agreements, or other arrangements, commercial or otherwise, shall be deemed to have entered into a consensual relationship with the Nez Perce Tribe or its members subject to the regulatory and adjudicatory jurisdiction of the Nez Perce Tribe.

#### **§6-13-6 Sovereign Immunity**

Nothing in this Code shall be construed to waive, alter, or otherwise diminish the Nez Perce Tribe's Sovereign Immunity, whether expressed or implied, by virtue of this Code for any and all administrative or legal action which may arise directly or indirectly from the same; nor does the Nez Perce Tribe waive, alter, or otherwise diminish its rights, privileges, remedies, or services guaranteed by the Treaty of 1855.

#### **§6-13-7 Exemption from Prosecution for Certain Acts**

No employee or Key Participant of a Licensed Hemp Business or Licensed Producer or Processor shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, or distribution of Hemp when acting in accordance with the requirements of this Code and applicable Tribal and federal law.

#### **§6-13-8 Compliance with Federal Law**

Nothing in this Code authorizes any Person to violate any Federal law or regulation.

#### **§6-13-9 Savings Clause**

In the event that any phrase, provision, part, paragraph, subsection, or section of this Code is found by a court of competent jurisdiction to violate the Constitution or laws of the Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Code. The entirety of the balance of this Code shall remain in full and binding force and effect.

#### **§6-13-10 Section Reserved**

#### **§6-13-11 Definitions**

Within this Hemp Regulatory Code, the following definitions apply:

(a) **Acceptable Hemp THC Level** *means* when a laboratory tests a sample, it must report the Total Delta-9 Tetrahydrocannabinol (THC) content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of this hemp plan is when the application of the measurement of uncertainty to the reported Total Delta-9 Tetrahydrocannabinol content concentration level on a Dry Weight Basis produces a distribution or range that includes 0.3% or less. For example, if the reported Total 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 federal statutory definition of hemp, 7 U.S.C.

§1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. § 802(16), in the Controlled Substances Act.

(b) **Agriculture Office** *means* the Nez Perce Tribal office, program, agency, commission, or department responsible for the oversight and implementation of the Hemp Regulatory Code as designated by the NPTEC.

(c) **AMS** *means* the Agricultural Marketing Service (AMS) under the U.S. Department of Agriculture (USDA), which administers programs that create domestic and international marketing opportunities for U.S. producers of food, fiber, and specialty crops.

(d) **Applicant** *means* a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Nez Perce Tribe Hemp Program.

(e) **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 been determined.

(f) **Commercial Sales** *means* the sale of a product in the stream of commerce at retail or at wholesale, including sales on the Internet.

(g) **Consumable Product** *means* a Hemp Product intended for human or animal consumption.

(h) **Cultivate** *means* to plant, water, grow, or harvest a plant or crop.

(i) **DEA** *means* the United States Drug Enforcement Administration.

(j) **Decarboxylated** *means* the completion of the chemical reaction that converts THC-acid into Delta-9 Tetrahydrocannabinol. The decarboxylated value is also calculated using a conversion formula that sums Delta-9 Tetrahydrocannabinol and eighty-seven and seven-tenths (87.7) percent of THC-acid.

(k) **Delta-9 Tetrahydrocannabinol** or **THC** *means* delta-9- tetrahydrocannabinol concentration (the primary intoxicating component of Cannabis). For purposes of this Plan, Delta-9 Tetrahydrocannabinol and THC are interchangeable.

(l) **Disposal** *means* destroying non-compliant Hemp using one of the approved on-farm methods. Approved methods include plowing under, mulching / composting, disking, bush mowing, deep burial, and burning the non-compliant Hemp.

(m) **Dry Weight Basis** *means* the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. In the case of Cannabis, a 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.

(n) **FSA** means the Farm Service Agency (FSA), which is an agency under the U.S. Department of Agriculture (USDA) that serves all farmers, ranchers and agricultural partners through the delivery of effective, efficient agricultural programs.

(o) **GPS** *means* global positioning system.

(p) **Grow Site** *has the same meaning as* **Registered Land Area** as that term is defined in this Section, below.

(q) **Harvest Lot** *means* a quantity of Hemp, of the same Variety, harvested in a distinct timeframe that is: (1) Cultivated in one contiguous production area within a Grow Site; or (2) Cultivated in a portion or portions of one contiguous production area within a Grow Site. Harvest Lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.

(r) **Harvest Lot Identifier** *means* a unique identifier used by the Nez Perce Tribe to identify the Harvest Lot.

(s) **Hemp** *means* the plant *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 THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, or as otherwise defined in Federal law.

(t) **Hemp Crop** *means* one (1) or more unprocessed Hemp plants or plant parts.

(u) **Hemp eManagement Platform (H.eM.P.)** *means* USDA's secure online system for USDA producers, states, tribes, testing laboratories, and sampling agents that will be used to manage and submit hemp information and mandatory reporting to USDA, replacing the need to submit via email, mail, or fax.

(v) **Hemp Ingredient** *means* all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers of any part of the Hemp plant included in the definition of "Hemp."

(w) **Hemp Processor** *means* any person processing, manufacturing, extracting, or producing Hemp Products.

(x) **Hemp Producer** *means* any person growing, cultivating, handling or harvesting hemp, hemp crops, hemp seeds, or hemp propagules on the Nez Perce Reservation, and who is licensed by the Agriculture Office to Cultivate or Handle Hemp on the Nez Perce Reservation.

(y) **Hemp Product** *means* a finished product with an Acceptable Hemp THC Level, that is derived from, or made by, processing a Hemp Crop, and that is prepared in a form available for commercial sale. The term includes, but is not limited to cosmetics, personal care products, Consumable Products, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more Hemp Ingredients such as cannabidiol.

(z) **Hemp Program** *means* the cannabis regulatory framework established under this Code with respect to Hemp.

(aa) **Hemp Seller** *means* any person marketing, distributing, or selling, wholesale or retail, hemp or hemp-based products.

(bb) **Industrial Hemp** *has the same meaning as* **Hemp** as that term is defined in this Section, above.

(cc) **Institution of Higher Education** *has the meaning* assigned to it by 20 U.S.C. § 1001.

(dd) **Intended for Consumption** *means* intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.

(ee) **Key Participant** *means* a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation, limited liability company or any other corporate entity. This definition does not include a member of NPTEC who is acting in their official capacity as a Tribal leader except when that member exercises managerial control over Hemp production. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

(ff) **License** *means* a permit issued by the Nez Perce Tribe to an individual or business to grow, process, manufacture, distribute or transport hemp or hemp-based products. A valid license means that the license is unexpired, unsuspended, and unrevoked.

(gg) **Licensee** *has the same meaning as* **Hemp Producer** as that term is defined in this Section, above.

(hh) **Measurement of Uncertainty** or **MU** *means* the parameter, associated with the results of a measurement that characterizes the dispersion of the valued that could reasonably be attributed to the particular quantity subject to measurement.

(ii) **NPTEC** *means* the duly elected Nez Perce Tribal Executive Committee, which is the governing body of the Nez Perce Tribe.

(jj) **Person** *means* a natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as the Nez Perce Tribe or a local government entity.

(kk) **Process** *means* to convert any portion of a Hemp Crop into a Hemp Ingredient, Hemp Product, or other marketable form.

(ll) **Registered Land Area** *means* a contiguous lot, parcel, or tract of land registered with the Nez Perce Tribe on which a Licensee Cultivates Hemp. A Registered Land Area may include land and buildings that are not used to Cultivate Hemp.

(mm) **Remediation** *means* any process by which non-compliant Hemp is rendered compliant. Remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds; or by shredding the entire hemp plant to create a homogenous “biomass.” Regardless of the form of Remediation used, the remediated Hemp must then be retested for THC compliance.

(nn) **THC** *means* Tetrahydrocannabinol (the primary psychoactive component of Cannabis) and *has the same meaning* as **Delta-9 THC**, measured post-decarboxylation. For purposes of this Plan, Delta-9 THC and THC are interchangeable.

(oo) **THCA** *means* Tetrahydrocannabinolic acid.

(pp) **Total THC** *means* the value determined after the process of decarboxylation, that expresses the potential total Delta-9 Tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion:  $[\text{Total THC} = (0.877 \times \text{THCA}) + \text{THC}]$  which calculates the potential total THC in a given sample.

(qq) **Variety** *means* a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

## **PART II. OVERSIGHT, AUTHORITY, AND THE AGRICULTURE OFFICE**

### **§6-13-12 Nez Perce Tribe Hemp Program**

(a) Persons desiring to Cultivate Hemp must obtain a license from the Tribe prior to engaging in such activity.

(b) Persons seeking to Cultivate Hemp shall provide to the Agriculture Office the legal description and GPS coordinates sufficient for locating the Registered Land Area and each field, greenhouse, or structure where the Person Cultivates Hemp, or intends to Cultivate Hemp.

(c) Notwithstanding any rule or regulation to the contrary, the inclusion of Hemp as an ingredient in a Consumable Product shall not by itself render the product misbranded or adulterated.

### **§6-13-13      Agriculture Office**

The Nez Perce Tribe's Agriculture Office shall have the complete and full authority necessary to fulfill its responsibilities under this Code, including but not limited to licensing, inspection, sampling, testing, regulation, fee scheduling, taxation, and enforcement.

### **§6-13-14      *Section Reserved***

## **PART III.      HEMP LICENSING**

### **§6-13-15      General – Annual Hemp License Required**

Any person who would like to grow, cultivate, process, manufacture, produce, extract, market, distribute, or sell Hemp (including seeds and propagules) and Hemp Products within, or emanating from, the Nez Perce Tribe shall complete a license application, annually, prior to any hemp activity. The Agriculture Office may choose to tailor licenses differently for Hemp Producers, Hemp Processors, and Hemp Sellers.

### **§6-13-16      License Applications**

(a)      **LICENSE APPLICATION.** The Applicant shall submit a signed, complete, accurate and legible application form provided by the Agriculture Office at least thirty (30) days prior to planting that includes the following information:

- (1)      **CONTACT INFORMATION.** Full name, residential address, telephone number, and email address;
- (2)      **BUSINESS ENTITY.** If the Applicant represents a business entity, the full legal entity name of the business, the principal business location address on the Nez Perce Reservation, full name and title of the Key Participants, Employer Identification Number (EIN) of the business entity; the full name of the Applicant who will have signing authority on behalf of the entity, title, and an email address of the Person with signing authority;
- (3)      **BACKGROUND CHECK.** A completed criminal background check report, which includes a national search, for the Applicant on a form determined by the Agriculture Office demonstrating that the Applicant does not have any disqualifying felony drug convictions pursuant to Section 6.13.23 of this Code;
  - (A)      Each Applicant is required to submit fingerprints to the Nez Perce Tribal Police Department or other law enforcement agency designated by the Agriculture Office, to obtain a current criminal history check, proof of which must be submitted as an attachment to the application for licensure.



- (B) Applicants must also submit a notarized attestation that the Applicant does not have any felony conviction relating to a controlled substance under state, tribal, or federal law for the previous ten (10) years as required by the 2018 Farm Bill, unless the Applicant was already licensed as a Hemp Producer in this Tribe prior to December 20, 2018.
  - (C) The Agriculture Office shall review the criminal history report for each Applicant to determine whether the felony ban applies.
  - (D) When an Applicant is a business entity, the Applicant shall submit, and the Agriculture Office shall review a criminal history report for each Key Participant in the business.
  - (E) Any Applicant or Licensee must report any felony conviction relating to controlled substances under state, Tribal, or Federal law to the Agriculture Office within five (5) business days of receiving notice of such conviction;
  - (F) Application fees shall not cover or include the cost of the criminal background checks.
- (4) FEE. An application fee as set by the Tribe's Agriculture Office;
  - (5) GROW SITE REGISTRATION APPLICATION. As set forth below;
  - (6) ACKNOWLEDGMENT. An acknowledgment of the licensing terms and conditions as detailed below; and
  - (7) OTHER. Any other information or disclosure required to be submitted by Federal regulation.

#### **§6-13-17      Grow Site Registration Application**

As a component of the Hemp Producer license application, each Applicant shall submit a Grow Site registration application on a form provided by the Agriculture Office for each proposed Registered Land Area in which the Applicant intends to Cultivate Hemp. Information submitted to the Agriculture Office must include, at a minimum:

- (a) The street address and legal description of each field, greenhouse, building, or site where Hemp will be Cultivated;
- (b) If Hemp is Cultivated or is intended to be Cultivated in a field:
  - (1) The GPS coordinates provided in decimal of degrees and taken at the approximate center of the Grow Site;

- (2) The number of square feet or acres of each Grow Site; and
  - (3) A map of the production area showing clear boundaries of the Grow Site.
- (c) If Hemp is Cultivated or is intended to be Cultivated in a greenhouse or other building:
  - (1) The GPS coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building composing the Grow Site;
  - (2) The approximate dimension or square feet of the greenhouse or other building composing the Grow Site; and
  - (3) A map of the production area showing clear boundaries of the Grow Site.
- (d) The Agriculture Office may approve an Applicant to Cultivate an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the Grow Site registration application.
- (e) Applicants must have the legal right to produce Hemp on the Registered Land Area and the legal authority to grant the Agriculture Office access for inspection and sampling.

#### **§6-13-18 Terms and Conditions Acknowledgment**

By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:

- (a) Any information provided to the Agriculture Office may be provided to law enforcement agencies without further notice to the Applicant;
- (b) The Applicant or Licensee shall allow and fully cooperate with any inspection and sampling that the Agriculture Office deems necessary;
- (c) The Applicant or Licensee shall pay for any inspection and laboratory analysis costs that the Agriculture Office deems necessary within thirty (30) days of the date of the invoice, provided that the Licensee shall not be required to pay for more than one (1) Agriculture Office inspection and associated laboratory analysis costs per year for each Lot. Combining Lots is not permitted;
- (d) The Applicant or Licensee shall submit all required reports by the applicable due date specified by the Agriculture Office;
- (e) Applicants shall submit fingerprints and pay criminal background check fees directly to the Nez Perce Tribal Police or other law enforcement agency designated by the Tribe to obtain a criminal history background check report; and

(f) The Applicant or Licensee must report any felony convictions relating to controlled substances under state or federal law to the Agriculture Office within five (5) business days of receiving notice of such conviction.

#### **§6-13-19 License Term**

All licenses issued shall be valid for one (1) year from date of issuance, unless otherwise extended, or revoked at an earlier date pursuant to Section 6.13.21 below or other Agriculture Office issued rule. License numbers issued by the Agriculture Office will be in the format prescribed by the USDA.

#### **§6-13-20 Annual Renewal**

Current and valid licenses may be renewed annually or as otherwise determined by the Agriculture Office by submitting a renewal application on a form provided by the Agriculture Office no later than thirty (30) days prior to the date of the license expiration. Renewal licenses shall be subject to a Background Check as detailed above in Section 6.13.16(A)(3).

#### **§6-13-21 Ineligible for a Hemp License**

(a) RESTRICTIONS. Unless otherwise provided under this Code, the following individuals shall be ineligible for a License under this Code:

- (1) Any Person who is not an enrolled member of the Nez Perce Tribe or a resident who lives within the territorial jurisdiction of the Nez Perce Tribe;
- (2) Any Person under the age of 18 years;
- (3) Any Person convicted of a felony relating to a controlled substance under tribal, state, or federal law shall be ineligible, during the ten (10) year period following the date of such felony conviction.
- (4) Any Person who materially falsifies any information contained in their Hemp license application.
- (5) Any Person that Negligently violates the Industrial Hemp law or regulations three (3) times in a five (5) year period shall be ineligible to participate in the Nez Perce Tribe Hemp Program for a period of five (5) years beginning on the date of the third violation.

(b) ENTITIES/EMPLOYEES. Licensees cannot have primary employees or partners, including Key Participants and individuals with executive managerial control, within their Hemp production who are convicted of a felony, relating to a controlled substance, within the past ten (10) years from the date of the application of a License, under tribal, state, or federal law.

**§6-13-22      *Section Reserved***

**§6-13-23      **Revocation of a License****

The License of a Hemp Producer shall be immediately revoked in the event that a Licensee (Hemp Producer):

- (a)      Pleads guilty to, or is convicted of, any felony related to a controlled substance;
- (b)      Makes any materially false statement with regard to the provisions of this Code to the Agriculture Office;
- (c)      Commits any act of ineligibility within this Code; or
- (d)      Is found to be growing Cannabis exceeding the Acceptable Hemp THC Level with a Culpable Mental State Greater Than Negligence.

**§6-13-24      **Appeal of Denial of License****

The Nez Perce Tribe Agriculture Office shall develop and make public a process to hear and decide appeals of denials and revocation of licenses.

**§6-13-25      **Fees****

- (a)      Each Applicant shall pay the application fee set by the Agriculture Office when submitting a Hemp Producer license application.
- (b)      The Agriculture Office may set and collect additional fees, including license, renewal, and testing fees, in amounts that are reasonable and necessary to cover the costs of administering and enforcing the Nez Perce Tribe Hemp Program.
- (c)      Application fees shall not cover or include the cost of obtaining and submitting a criminal background check report.

**§6-13-26      **Compliance and Enforcement****

- (a)      Licenses cannot be assigned or transferred to another Person, unless first approved by the Agriculture Office in writing. Any transfer of License shall also be reported to the USDA and local FSA office.
- (b)      Hemp Producers shall provide the Agriculture Office's inspector complete and unrestricted access to all plants, parts, and seeds within a Registered Land Area, whether growing or harvested, and all land, buildings and other structures used for the Cultivation of Hemp, and all documents and records pertaining to the Licensee's Hemp business.

(c) It is unlawful to transfer or sell Hemp or Hemp Products that exceed the Acceptable Hemp THC Level.

**§6-13-27      *Section Reserved***

**§6-13-28      *Section Reserved***

**§6-13-29      *Section Reserved***

#### **PART IV.      REGISTERED LAND AREA CONTROLS**

##### **§6-13-30      Land Use Restrictions and Site Modification**

(a) A Licensee shall not Cultivate Hemp on any site not listed in a valid Agriculture Office approved Grow Site registration.

(b) Any Licensee that wishes to alter its Registered Land Area shall, before altering the Registered Land Area, submit to the Agriculture Office an updated legal description, GPS location, and map specifying the proposed alterations on a form determined by the Agriculture Office.

(c) No modifications to the Registered Land Area may be made without prior written approval from the Agriculture Office.

(d) No Registered Land Area may be included in more than one (1) Grow Site registration at the same time, and no Hemp plant shall be included in more than one (1) Grow Site registration simultaneously.

##### **§6-13-31      Location; Restrictions**

(a) Any establishments which sell retail CBD products shall not be within 100 feet of a school or other location primarily populated by minors.

(b) Licensees shall ensure Hemp grows are completely segregated from any other crops.

(c) A Licensee shall not allow unsupervised access to Hemp Grow Sites and manufacturing facilities.

(d) A Licensee cannot employ or partner with any Person, within their Hemp business, convicted of a felony related to a controlled substance under tribal, state, or federal law, or who would otherwise be ineligible from participating in the Nez Perce Tribal Hemp Program in accordance with this Code.

**§6-13-32**      *Section Reserved*

**§6-13-33**      *Section Reserved*

**§6-13-34**      *Section Reserved*

**PART V.      TRANSPORTATION**

**§6-13-35**      **Transportation**

(a)      The Licensee or other Person responsible for the transportation of a Hemp Crop must ensure that the following documentation accompanies the Hemp at all times during transport:

- (1)      A copy of the Tribe's Hemp Producer license that corresponds to the Registered Land Area from which the Hemp originated;
- (2)      A copy of the pre-harvest test results that correspond to the Harvest Lot in transit as identified by the Harvest Lot Identifier that accompanies the Hemp;
- (3)      Destination Information; and
- (4)      Any other documentation that may be required by the Agriculture Office or the USDA.

(b)      The 2018 Farm Bill and accompanying committee report language explicitly prohibits state and tribal governments from interfering with the interstate transportation of hemp and hemp products. The Tribe shall provide reciprocity to other state and tribal licenses and testing certifications for Hemp and Hemp Products being transported through the Nez Perce Reservation. Any person who possesses Hemp or Hemp Products which will stay within the Nez Perce Reservation must apply for a Nez Perce Tribe license.

**§6-13-36**      *Section Reserved*

**§6-13-37**      *Section Reserved*

**§6-13-38**      *Section Reserved*

**§6-13-39**      *Section Reserved*

## **PART VI. RECORDS AND REPORTS**

### **§6-13-40 Agriculture Office Reports**

(a) The Nez Perce Tribe's Agriculture Office requires annual harvest, contact information, and disposal reports of Licensees, which may include information on: seed variety; field location; legal description of the land on which the Licensee will grow, produce, or handle Hemp (including, to the extent practicable, geospatial location) agricultural techniques; production and sales; end use of product; contact information including full name, telephone number, license identifier, business address or principal business location address, federal employer identification number (to the extent applicable), title, and email address (if available) of Licensee or each Key Participant of a Licensee; disposal records of any non-conforming plants or plant material disposed of in accordance with Section 6.13.56 below, including the name and address of the Licensee, Licensee license number, location information for the lot subject to disposal, information on the disposal agent, date that such disposal was completed, and the total acreage disposed; annual information including total acreage of hemp planted, total harvested acreage, and, if applicable, total acreage disposed; and any other report information deemed necessary by the Agriculture Office to which the Licensee has consented in the license application.

(b) To the extent required, the Agriculture Office will report and share any such information to the USDA's Agricultural Marketing Service (AMS) through the online Hemp eManagement System (H.eM.P.), including pursuant to 7 C.F.R. § 990.3(a)(9), in order to support the information sharing requirements in 7 U.S.C. § 1639q(d).

### **§6-13-41 Retention**

The Agriculture Office shall maintain information on hemp licenses, license applications, reports provided to USDA under Section 6.13.43 below, and other relevant information regarding the Registered Land Area on every approved site which Hemp is produced, including a legal description of the land, for a period of not less than three (3) calendar years.

### **§6-13-42 Privacy Protections**

Except as required by USDA reporting and to law enforcement, the Agriculture Office shall remove the following from any collected information: all personally identifiable information including name; physical address; drivers' licenses; social security numbers; GPS coordinates; telephone numbers; email address. Such information shall be shielded by the Agriculture Office to the maximum extent permitted by law.

### **§6-13-43 Reporting to the USDA**

(a) Tribal Monthly USDA Producer and Disposal Report: On the first of each month, the Agricultural Office will submit to the USDA a report, in the format compatible with USDA's Hemp eManagement Platform (H.eM.P.), containing the following:

- (1) The time period covered by the report;

- (2) If applicable, an indication that there were no changes during the time period;
- (3) Contact information for each Hemp Producer;
- (4) A legal description of each Hemp Producer's land, including to the extent practicable, geospatial location;
- (5) The acreage or indoor square footage dedicated to the production of Hemp for each Hemp Producer;
- (6) The license number for each Hemp Producer;
- (7) The status or status change and number of each Hemp Producer's License, including previously reported information and new information;
- (8) If there have been any disposals that month, the report must also include:
  - (A) Name and address of the Hemp Producer;
  - (B) Hemp Producer License number;
  - (C) Location information (such as lot number, location type, and if practicable geospatial location) for the production area subject to disposal;
  - (D) Testing results;
  - (E) Information on the agent who handled the disposal;
  - (F) Disposal completion date; and
  - (G) Total acreage disposed.

(b) Tribal Annual USDA Acreage Report: Annually, by December 15 of each year, the Agriculture Office shall report, in the format compatible with the USDA's Hemp eManagement Platform (H.eM.P.), to the USDA, the following:

- (1) Total planted acreage;
- (2) Total harvested acreage; and
- (3) Total acreage disposed.

(c) Hemp Producer Report to FSA: After receiving a Nez Perce Tribe Hemp License, and in addition to providing this Report to the Tribe's Agriculture Office, each Hemp Producer is



responsible for submitting the following information to the USDA's Hemp eManagement Platform (H.eM.P.), and will update the FSA and Tribe's Agriculture Office not more than thirty (30) days after the date on which the information is changed:

- (1) Street address, and to the extent practicable geospatial location, for each Harvest Lot or indoor growing facility where such producer grows Hemp. If a Hemp Producer operates in more than one location, or is producing under multiple licenses, production information shall be provided for each location;
- (2) Total acreage or indoor square footage dedicated to Hemp production;
- (3) Total acreage of Hemp planted, harvested, and disposed or remediated; and
- (4) License identifier number.

(d) Hemp Producer Test Results Report: Each Hemp Producer will work with the DEA-registered laboratory that conducts the test of sample(s) of Hemp crop collected in accordance with the Sections below under PART VII INSPECTIONS, SAMPLING AND TESTING from the Hemp Producer's lot(s) to ensure that the test results for all such sample(s) include information required under 7 C.F.R. § 990.7(d) and are reported to the USDA's Hemp eManagement Platform (H.eM.P.).

(e) Laboratory Reporting Requirements: Laboratories conducting the "final" test that will be used to determine whether a pre-harvest sample is complaint shall report all test results—whether passing or failing—to the USDA's Hemp eManagement Platform (H.eM.P.) via the "Laboratory Test Results Report."

- (1) Laboratories conducting testing for purposes of *monitoring the THC concentration throughout the growing season* are not subject to the reporting requirements. These tests throughout the growing season are for the Hemp Producer (Licensee) to monitor their production as it grows and not to comply with the pre-harvest testing requirements.

#### **§6-13-44 Hemp Producer/Licensee Recordkeeping and Reporting**

(a) Hemp Producers/Licensees must report any changes of contact information to the Agriculture Office in writing within fourteen (14) days of the change.

(b) Planting Report: Within fourteen (14) days after planting any Hemp, each Hemp Producer shall submit, on a form provided by the Agriculture Office, a Planting Report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of Hemp planted.

(c) Pre-Harvest Report: At least thirty (30) days prior to harvest, each Hemp Producer shall file a Harvest Report, on a form provided by the Agriculture Office that includes:

- (1) A statement of intended disposition of its Hemp crop; and
- (2) The projected harvest date(s) and location(s) of each Variety of Hemp Cultivated within a Registered Land Area. A Hemp Producer must notify the Agriculture Office immediately of any changes in the reported harvest date(s) in excess of seven (7) days.
- (3) A Hemp Producer is not required to document the removal of male Hemp plants on a Harvest Report provided that the male Hemp plants are destroyed or utilized on the Registered Land Area prior to filing a Harvest Report for the remaining Cannabis plants.

(d) A Hemp Producer must retain all documentation of sampling and testing for at least three (3) years in a manner such that it can be readily provided to the Agriculture Office upon request.

**§6-13-45**      *Section Reserved*

**§6-13-46**      *Section Reserved*

**§6-13-47**      *Section Reserved*

**§6-13-48**      *Section Reserved*

**§6-13-49**      *Section Reserved*

## **PART VII.    INSPECTIONS, SAMPLING, AND TESTING**

### **§6-13-50      Inspections**

(a) The Nez Perce Tribe's Agriculture Office shall conduct, at a minimum, an annual inspection of Licensees (Hemp Producers) and all Registered Land Areas (Grow Sites) to verify compliance with all requirements of the license issued and provisions of this Code.

- (1) The inspections may be without prior notice and inspection visits may be conducted at any time during regular business hours.
- (2) Inspectors and/or Sampling Agents shall be granted unrestricted access to the Registered Land Area(s) and all adjacent areas under the Licensee's control.

- (3) All samples collected by the Agriculture Office shall become the property of the Agriculture Office and no compensation shall be owed by the Agriculture Office for such samples.
- (4) The Agriculture Office shall keep test results for all Hemp and Hemp Products tested for a minimum of three (3) years.
- (5) The inspections may be of all Licensees or of a blindly-selected random sample of Licensees.

(b) The provisions set forth below in PART VIII VIOLATIONS will apply to any Licensee found to be in violation of this Code following any inspection.

#### **§6-13-51 Lab Accreditation**

(a) Compliance and safety testing for Hemp and Hemp Products required by this Code shall be conducted by independent laboratories accredited to ISO/IEC 17025, the standard published by the International Organization for Standardization (the “ISO”) titled “General requirements for the competence of testing and calibration laboratories,” or an accreditation standard approved by the USDA and Tribe. All laboratories testing hemp regulated pursuant to this Code shall be DEA-registered after December 31, 2022.

(b) Sampling and testing procedures and methods shall be conducted in accordance with the Sections below.

(c) All final test results must be certified by a DEA-registered laboratory before the Hemp or Hemp Products can enter the stream of commerce.

#### **§6-13-52 Procedure for Sampling and Testing**

(a) The Tribe will utilize the USDA Sampling Guidelines for Hemp Growing Facilities and the USDA Testing Guidelines for Identifying Delta-9 Tetrahydrocannabinol Concentration in Hemp (updated Jan. 15, 2021), each as may be amended from time to time, for purposes of establishing procedures both for effectively collecting samples and for testing the Delta-9 Tetrahydrocannabinol concentration levels of hemp produced on or sold from the Nez Perce Reservation, using post-decarboxylation.

- (1) Procedures for collecting samples from the flowering tops of plants which shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud).

(b) Representatives of the sampling agency shall be granted complete and unrestricted access during business hours to all Hemp and other Cannabis plants and to the Registered Land Area(s), buildings and all adjacent areas under the Licensee’s control used for cultivation and/or handling.

### **§6-13-53      Methods for Sampling and Testing**

(a)      The sampling methods used under this Code must ensure that a representative sample is collected that represents a homogenous composition of the lot and must be sufficient at a confidence level of 95% that no more than 1% of plants would exceed the Acceptable Hemp THC level.

(b)      The Total THC concentration level shall be determined and reported on a Dry Weight Basis, and the testing methodology shall consider the potential conversion of Delta-9 Tetrahydrocannabinol acid (THC-A) in hemp into THC and test results will measure total available THC derived from the sum of the THC and THC-A content.

(c)      Permitted testing methodologies include gas or liquid chromatography with detection.

(d)      The Total THC concentration level shall be determined and reported on a Dry Weight Basis.

(e)      The Agriculture Office may choose to contract for such collection and testing services. A contracted Sampling Agent will be trained pursuant to USDA requirements. Information on a contracted agent will be made available to Licensees. Producers may not collect samples from their own Growing facilities.

### **§6-13-54      Compliance Sampling and Testing Prior to Harvest**

(a)      When referring to “sampling” in this Section, sampling means the process of collecting cuttings from Hemp plants for purposes of compliance testing.

(b)      A Hemp Producer must arrange for and ensure the sampling of each Harvest Lot no more than thirty (30) days prior to harvest for the purpose of ensuring that the Harvest Lot does not exceed the maximum permissible THC concentration levels on a Dry Weight Basis. Producers may not collect samples from their own Growing facilities.

(c)      Compliance and safety testing for Hemp and Hemp Products required under this Code shall be conducted by a DEA-registered laboratory.

(d)      Representative samples collected from a Harvest Lot in accordance with this Section shall be delivered to and tested at a DEA-registered laboratory using a reliable methodology for Total Delta-9 Tetrahydrocannabinol testing. Any such analytical testing for purposes of detecting the concentration levels of THC shall comply with the standards set forth in 7 C.F.R. §§ 990.3(a)(3)(iii) and 990.25, including using procedures to adhere to standards of performance for detecting THC concentration and using a Measurement of Uncertainty.

(e)      A Hemp Producer shall not remove a Harvest Lot from a Registered Land Area (i.e., Grow Site) that has not been sampled and tested for compliance in accordance with this Section.

(f) Samples of Hemp plant material from one Harvest Lot shall not be commingled with Hemp plant material from other Harvest Lots.

(g) Samples shall include the flower material from the Hemp crop for Delta-9 Tetrahydrocannabinol concentration testing purposes.

(1) Procedures for collecting samples from the flowering tops of plants which shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud).

(h) Except for samples collected by the Agriculture Office for auditing, inspection, and performance-based purposes, all samples collected to determine compliance with these rules shall be collected by an approved tribal, state, local or federal law enforcement agency, or other tribal, state, local, or federal designated Person.

(i) During a scheduled sample collection, the Hemp Producer or an authorized representative thereof shall be present at the Grow Site.

(j) The required number and size of samples shall be determined in accordance with the USDA Sampling Guidelines for Hemp Producers, as amended from time to time.

(k) Any test of a representative sampling resulting in higher than the Acceptable Hemp THC Level shall be conclusive evidence that the Harvested Lot represented by the sample is not in compliance with this Code.

(l) Harvested Lots tested and not certified by a DEA-registered laboratory at or below the Acceptable Hemp THC Level may not be further handled, processed, or enter the stream of commerce. Cannabis containing more than the Acceptable Hemp THC Level is prohibited to be transferred or sold and must be disposed of in accordance with this Code.

(m) Nothing in this Section shall prevent a Hemp Producer from voluntarily collecting samples and testing Hemp for quality assurance and research and development purposes. The test results from voluntary tests performed by the Hemp Producer shall not be sufficient to evidence compliance with this Code.

(n) A Hemp Producer may apply to the Agriculture Office for retesting and/or resampling of any non-compliant Harvest Lot within 30 days of Harvest, which may be approved or denied at the Agriculture Office’s discretion.

#### **§6-13-55 Post-Testing Procedures**

(a) The Hemp Producer must harvest the Hemp Crop no more than thirty (30) days following the sampling of the Hemp Crop. If the Hemp Crop within a Harvest Lot is not harvested within thirty (30) days from the sampling, another pre-harvest sampling must be taken and tested.

(b) If the Hemp plants are harvested prior to the return of the test results, the Hemp plants must be kept segregated from all other Harvest Lots and may not be comingled for any purpose.

(c) Once the Hemp Crop is certified by the testing facility as Hemp, it may be sold or transferred as authorized by the Hemp Producer's License.

#### **§6-13-56 Federal Notice Required for Non-Compliant Test Results**

The Agriculture Office shall promptly notify the USDA AMS Administrator of any occurrence of Cannabis plants or plant material that do not meet the definition of Hemp and will attach disposal records demonstrating the appropriate disposal of all of those plants and materials in the Harvested Lot from which the representative samples were taken.

#### **§6-13-57 Remediation and Disposal of Non-Compliant Plants and Hemp Products**

(a) Hemp that tests higher than the Acceptable Hemp THC Level shall be remediated or disposed of by the Hemp Producer in compliance with USDA Guidance on Remediation and Disposal (issued Jan. 15, 2021) and all applicable federal, tribal, and local laws, regulations, rules, and other requirements.

(b) REMEDIATION. Remediation can be achieved by separating and destroying non-compliant flowers while either retaining stalks, leaves, and seeds, or, by shredding the entire Hemp plant to create a homogenous biomass. Regardless of the form of Remediation used, the remediated Hemp must be retested for THC compliance.

- (1) Separate and Remove Flowers: The remediator must remove and destroy the buds, trichomes, trim, and kief from the plants within the non-compliant Harvest Lot. The remediator may remove the non-compliant buds, trichomes, trim, and kief by hand or by the use of a mechanical device that can properly remove the noncompliant buds, trichomes, trim, and kief.
  - (A) The leftover stalks, leaves, and seeds must be separated from the noncompliant floral material and labeled clearly and demarcated as "hemp for remediation purposes."
  - (B) Seeds removed from non-compliant hemp during remediation must not be used for propagative purposes.
  - (C) Remediated stalks cannot leave the labeled and demarcated area until a test result showing compliance with the Acceptable Hemp THC Level is received or until the remediated stalks are destroyed. The resample must be taken by a Sampling Agent as described in the USDA's Sampling Guidelines and as outlined in this Code.

- (D) Any stalks that remain above the Acceptable Hemp THC Level after remediation and retesting shall be destroyed through any process outlined in this Code and the USDA Remediation and Disposal Guidelines (issued Jan.15, 2021). The Agriculture Office must verify that disposal occurred successfully.
- (2) Creation of Biomass: The entire non-compliant Harvest Lot, as reported to the USDA FSA, can be shredded to create a homogenous, uniform biomass, which can be achieved by shredding the non-compliant Harvest Lot through shredders, composters, or special mechanical equipment.
- (A) The biomass process must ensure that the non-compliant Harvest Lot is crushed, shredded, or mulched.
  - (B) The biomass created through this process shall be resampled and retested to ensure compliance before entering the stream of commerce in accordance with the Final Rule. Biomass that fails retesting is non-compliant Hemp and shall be destroyed.
  - (C) Remediated biomass must be separated from any compliant hemp stored in the area and clearly labeled and demarcated as “hemp for remediation purposes.” All Harvest Lots subject to remediation should be stored, labeled, and demarcated apart from each other and from other compliant hemp lots stored or held nearby.
  - (D) Remediated biomass cannot leave the labeled and demarcated area until a test result showing compliance with the Acceptable Hemp THC Level is received or until the biomass is destroyed.
  - (E) The resample should be taken by a Sampling Agent as described in the USDA’s Sampling Guidelines and as outlined in this Part of the Code.
  - (F) When resampling, a representative sample of the biomass should be taken for compliance purposes. The Sampling Agent must take biomass material from various depths, locations, and containers in the labeled and demarcated area to collect a representative sample of the material. At minimum, ~750 mL or three (3) standard measuring cups of biomass material should be collected. Sampling Agents may collect more biomass material based on the requirements of the testing laboratory. If ~750 mL of material is not available, the sampling agent should collect enough biomass material for a representative sample.
  - (G) An original copy of the resample test results, or a legible copy, must be retained by the Licensee or an authorized representative

and be available for inspection for a period of three (3) years from the date of receipt.

- (H) Laboratories testing a resample must use the same testing protocols as when testing a standard sample of Hemp.

(c) **DISPOSAL.** Disposal can be achieved through any process outlined in the USDA Remediation and Disposal Guidelines (issued Jan. 15, 2021). The Agriculture Office must verify that disposal occurred successfully. Disposal can be accomplished by:

- (1) Plowing a non-compliant Hemp Lot with curved plow blades that rotate subsoil to the surface and bury the crop below;
- (2) Mulching or composting field crops by cutting or blending crop with manure or other biomass material.
- (3) Disking or leveling the crop using a tow-behind disk implement to amend soil directly from the crop while leveling the field.
- (4) Commercial Bush Mower or Chopper to shred and mix vegetation to decompose into the soil.
- (5) Deep burial of crop by trenching the field and burying surface soil at a depth of twelve (12) inches.
- (6) Burning or setting fire to specific non-compliant production fields or biomatter piled on the field in order to clear all plant material.

**§6-13-58      *Section Reserved***

**§6-13-59      *Section Reserved***

## **PART VIII. HEMP LICENSE VIOLATIONS**

**§6-13-60      *Negligent License Violations***

(a) A Licensee or Hemp Grower has Negligently violated the Nez Perce Tribe's License requirements if they Negligently (each, a "Negligent Violation"):

- (1) Failing to provide a legal description of land on which the Hemp Producer Cultivates Hemp;
- (2) Failing to obtain a License or other required authorization from the Agriculture Office as applicable; or



- (3) Producing Cannabis sativa L. with a THC concentration of more than the Acceptable Hemp THC Level.

(b) Producers shall not receive more than one negligent violation per Growing Season.

(c) Notwithstanding the provisions above, a Hemp Producer does not commit a Negligent Violation under this Section if such Hemp Producer makes reasonable efforts to grow Hemp, and the Cannabis does not have a Delta-9 Tetrahydrocannabinol concentration of more than one percent (1.0%) on a Dry Weight Basis.

- (1) For the purposes of this Section, the Agriculture Office shall determine whether a Hemp Producer has taken reasonable efforts to grow Hemp.
- (2) Reasonable efforts involve taking necessary steps and precautions to produce Hemp, and may include without limitation using certified seed, using other seed that has reliably grown compliant plants, or engaging in other best practices.

(d) Potential Criminal Liability.

- (1) A Hemp Producer that negligently violates this Code shall not, as a result of that violation, be subject to any criminal enforcement action.

#### **§6-13-61 Corrective Action Plan**

(a) To correct a Negligent Violation, a Licensee shall be subject to a corrective action plan, which shall include:

- (1) A reasonable date to correct the negligent violation;
- (2) A requirement to report bi-annually to the Agriculture Office regarding their ongoing compliance for two (2) calendar years from date of the Negligent Violation; and
- (3) A requirement that the Licensee/Hemp Producer shall be subject to an inspection to determine if the applicable corrective action plan has been implemented as submitted.

#### **§6-13-62 Repeat Negligent Violations**

A Hemp Producer that negligently violates this Hemp Regulatory Code three (3) times in a five (5)-year period shall be ineligible to produce Hemp for a period of five (5) years beginning on the date of the third violation.

### **§6-13-63 Other Violations**

(a) If the Agriculture Office determines that a Licensee on the Nez Perce Reservation has violated Nez Perce Tribal Hemp laws or regulations with a Culpable Mental State Greater than Negligence, the Agriculture Office shall immediately report the Licensee to:

- (1) The United States Attorney General or his designee; and
- (2) The Nez Perce Tribal Police.

(b) The provisions set forth in the above Sections regarding Negligent Violations shall not apply to the violation in this section.

### **§6-13-64 Revocations, Suspensions, Penalties, and Civil Enforcement**

(a) The Agriculture Office may, at its discretion, revoke or suspend any License issued under this Code, or subject a Licensee to other civil penalties for violation of Nez Perce Tribe or federal law, this Code, or other rules or regulations promulgated by the Agriculture Office.

(b) When necessary, the Agriculture Office will investigate and/or determine whether a Licensee has violated any provision of this Code. If the Agriculture Office or its agents conclude a Licensee is in violation of this Code, it will determine whether a civil citation, revocation, suspension, or enforcement action is necessary.

(c) In the event the Agriculture Office determines a civil citation, revocation, suspension, or enforcement action is necessary, the Agriculture Office shall issue a civil citation notifying the Licensee of a violation and noting which part of the Code the Licensee had been found to be in violation of and serve the citation upon the licensee by mail and email at the physical and email addresses listed on the Licensees' application filed with the Agriculture Office. The citation is deemed to be served upon the Licensee within three (3) days of mailing. The citation shall have a clearly indicated choice for the Licensee to either mark agreement with the citation or to mark disagreement and an intent to challenge the citation.

### **§6-13-65 *Section Reserved***

### **§6-13-66 *Section Reserved***

## **PART IX. MISCELLANEOUS**

### **§6-13-67 Restrictions on Cannabis**

No Registered Land Area or storage area may contain Cannabis plants or parts thereof that the Licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than the Acceptable Hemp THC level on a Dry Weight Basis.

**§6-13-68**      *Section Reserved*

**§6-13-69**      **Transfer, Sale, and Purchase of Hemp**

(a) Any transfer, sale, purchase, or receipt of Hemp must be properly documented. A Licensee selling or transferring Hemp must include with the sale a copy of the test results verifying the Acceptable Hemp THC Levels and a copy of the seller's license. The Licensee selling or transferring Hemp must also record all other sale information, including date, time, prices, weight, sale or transfer location, and the buyer or receiver's License number if Licensed under a USDA approved plan or by the USDA.

(b) A Licensee purchasing or receiving Hemp must receive with the Hemp a copy of the seller's license under a USDA-approved plan or USDA license and a copy of the Hemp test results verifying the Acceptable Hemp THC Levels. The Licensee must also record all other purchase information available, such as date, time, prices, weight, and purchase location.

**§6-13-70**      **Other Licenses and Business Requirements**

Licensees must obtain a Nez Perce Tribe Business license and maintain all other Nez Perce Tribe or federally required business licenses and permits and pay all applicable taxes. Licensees must also comply with any Nez Perce Tribe zoning laws and any other such requirements for engaging in commerce within the Territories of the Nez Perce Tribe.

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## **PART X. APPENDICES**

- USDA Sampling Guidelines for Hemp (updated January 15, 2021)
- USDA Testing Guidelines for Hemp (updated January 15, 2021)

(from <https://www.ams.usda.gov/rules-regulations/hemp>)

**Sampling Guidelines for Hemp**  
**U.S. Domestic Hemp Production Program**  
**Issued January 15, 2021**

**Purpose:**

1. Standard and Performance-based sampling guidelines are specified for field and indoor sampling of hemp. States and Tribes shall develop their own sampling protocols in accordance with §990.3.

2. Samples are taken to obtain specimens for the measurement of total tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana. The measurements are intended to be representative of the total THC content in a “lot” of hemp crop acreage as identified by the producer. Hemp producers may not harvest hemp prior to the hemp being sampled for THC concentration. Testing procedures are provided in a separate guidance document.

**Scope:**

1. Samples collected under this procedure are acceptable for submission to a qualified testing laboratory for determination of total THC concentration in hemp. After December 31, 2023, all laboratories testing hemp under the U.S. Domestic Hemp Production Program must be registered with the DEA in accordance with §990.3(a)(3)(iii)(H) and §990.25(g)(iii).

2. Since the THC content of hemp generally peaks as the plant ripens, the timing of when sampling occurs is important to accurately measure total THC concentration and monitor compliance with the USDA hemp production program. Harvest shall be completed within 30 days from sample collection.

3. Samples shall be collected only by a trained sampling agent. Sampling agents must be trained under applicable USDA, State, or Tribal training procedures. States and Tribes must maintain information, available to producers, about trained sampling agents. Hemp producers may not act as sampling agents.

4. It is the responsibility of the licensed producer to pay any fees associated with sampling.

5. It is the responsibility of the sampling agent to pay any fees associated with sampling agent training or testing.

**Summary of Practice:**

1. This practice provides procedures for entering a growing area and collecting the minimum number of plant specimens necessary to represent a homogeneous composition of the “lot” that is to be sampled. A trained sampling agent enters a growing area, strategically examines the growing area, establishes an approach for navigating the growing area, and collects individual specimens of plants in order to obtain a representative sample of hemp in the designated lot.

2. Cuttings from each “lot” of hemp crop acreage, as identified by the producer, and submitted to and uniquely identified by the Farm Service Agency (FSA) per the requirements of the USDA hemp production program, shall be organized as composite samples. The terminology used by FSA to denote land areas include terms like “farm,” “tract,” “field,” and “subfield,” which are equivalent to AMS’s term “lot.” For the purposes of these procedures, a “lot” is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time. The size of the “Lot” is determined by the producer in terms of farm location and field acreage and is to be reported as such to the FSA.

### **Performance-Based Sampling Protocols:**

1. States and Tribes may develop performance-based sampling protocols.
2. Performance-based sampling protocols may consider seed certification processes, other process that identify varieties that have consistently resulted in compliant hemp plants, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors.
3. Performance-based sampling protocols may consider alternative requirements for operations that grow “immature” cannabis that does not reach the flowering stage. These facilities may grow seedlings, clones, microgreens, or other non-flowering cannabis, as determined by the State or Tribe.
4. A performance-based sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.
5. Regardless of the specific performance-based sampling requirements developed under a State or Tribal plan, all samples must be collected from the flowering tops of the plant by cutting the top five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), ”or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.
6. States and Tribes are required to include performance-based sampling protocols in the plan submitted to USDA for approval if they decide to use this methodology.

### **Standard Sampling Protocols:**

1. The standard sampling method must be used by all producers, except for producers operating under a State or Tribal plan that includes a performance-based sampling requirement.
2. The standard sampling protocol ensures, at a confidence level of 95 percent, that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensures that a collected sample represents a homogeneous composition of the lot.
3. Every lot and every producer must be sampled and tested.

4. All samples must be collected from the flowering tops of the plant by cutting the top five to eight inches from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), ”or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.

5. All producers licensed directly by USDA are subject to these requirements.

### **Equipment and Supplies:**

1. Garden pruners/shears (Cleaned prior to and following each composite sample. Some examples of appropriate cleaning agents and supplies to use on garden pruners/shears are bleach, rubbing alcohol, steel wool, and/or sandpaper.)

2. Sample bags, paper.

2.1. The size of the bags will depend upon the number of clippings collected per lot.

2.2 The bags should be made from material known to be free from THC.

3. Security tape

4. Permanent markers

5. Sample collection forms

6. GPS Unit of lot being sampled

7. Disposable gloves – Nitrile

8. Ladder

### **Sampling Guidelines:**

1. The licensee or designated employee should be present throughout the sampling process, if possible.

2. Surveillance of the growing area.

2.1. The sampling agent should estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the inflorescences (flowers/buds).

2.2. The sampling agent should visually establish the homogeneity of the stand to establish that the growing area is of like variety.

3. Time of Sampling:



3.1. Within 30 days prior to the anticipated harvest of a designated hemp lot, an approved sampling agent, State or Tribally designated person or Federal, State, local, or Tribal law enforcement agency shall collect representative samples from such cannabis plants for THC concentration level testing.

#### 4. Field Sampling:

4.1. The licensee or designated employee should accompany the sampling agent throughout the sampling process, if possible.

#### 5. Surveillance of the growing area.

5.1 The sampling agent should verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.

5.2 The sampling agent should estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the inflorescences (flowers/buds).

5.3 The sampling agent should visually establish the homogeneity of the stand to establish that the growing area is of like variety.

#### 6. Time of Sampling:

6.1 Within 30 days prior to the anticipated harvest of a lot a sampling agent should collect representative samples from such a lot for THC concentration level testing.

#### 7. Field Sampling:

7.1 For purposes of determining the number of individual plants to select for sampling, the size of the growing area should be considered. For sampling purposes, samples from separate lots must be kept separate and not be comingled.

7.2 For lots of less than one acre, including greenhouses, select a minimum of 1 plant, then take a cutting from the plant to form a sample. For lots of 1 to 10 acres, including greenhouses, follow the chart in example 2 below, take cuttings of each plant, then combine to form a composite sample.

7.3 For growing areas larger than ten (10) acres, including greenhouses, the number of plants that should be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.

7.4 The sample size is estimated in a two-step process. The first step is to estimate the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.

The initial number of primary plants is estimated using:

$$n_o = \frac{\ln(1-p)}{\ln(1-i)}$$

where  $p$  is the confidence level to detect hemp plants testing above the acceptable THC threshold and  $i$  is the proportion of hemp plants having THC content above the acceptable threshold. The values for  $i$  are based on past experience in the same or similar growing areas, and should be consistent with the requirements currently in the Final Rule.

The initial primary plants estimate is adjusted by the number of acres to calculate the minimum number of primary plants as follows:

$$n = \frac{n_o}{1 + \frac{(n_o - 1)}{N}}$$

where  $n$  is the minimum number of primary plants to be selected for forming a composite sample,  $n_o$  is the initial number of primary plants estimated using the previous formula, and  $N$  is the number of acres under cultivation.

Examples 1 and 2 below describe the minimum number of samples that must be collected in order to meet the 95% confidence level requirements in the Final Rule. If a State or Tribal hemp program does not have data from a prior growing season to determine the  $i$  value, the sampling charts below may be utilized. State and Tribal hemp programs are free to include more rigorous sampling requirements, or to develop performance based requirements.

Example 1: The initial primary plant sample size is 299 with a confidence level of 95% to detect hemp plants having an acceptable hemp THC level and a proportion of hemp plants having THC content above the acceptable threshold equal to 0.01 is considered appropriate. The adjusted primary plant sample sizes for fields from 11 to 173 acres in size are shown in the following table:

| Number of acres | Sample Size | Number of acres | Sample Size | Number of acres | Sample Size | Number of acres | Sample Size |
|-----------------|-------------|-----------------|-------------|-----------------|-------------|-----------------|-------------|
| 11              | 11          | 40              | 36          | 75-76           | 61          | 119-120         | 86          |
| 12              | 12          | 41-42           | 37          | 77              | 62          | 121-122         | 87          |
| 13              | 13          | 43              | 38          | 78-79           | 63          | 123-124         | 88          |
| 14              | 14          | 44              | 39          | 80-81           | 64          | 125-126         | 89          |
| 15              | 15          | 45-46           | 40          | 82              | 65          | 127-128         | 90          |
| 16              | 16          | 47              | 41          | 83-84           | 66          | 129-130         | 91          |
| 17              | 17          | 48              | 42          | 85-86           | 67          | 131-132         | 92          |
| 18-19           | 18          | 49-50           | 43          | 87              | 68          | 133-134         | 93          |
| 20              | 19          | 51              | 44          | 88-89           | 69          | 135-136         | 94          |
| 21              | 20          | 52              | 45          | 90-91           | 70          | 137-138         | 95          |
| 22              | 21          | 53-54           | 46          | 92              | 71          | 139-140         | 96          |
| 23              | 22          | 55              | 47          | 93-94           | 72          | 141-143         | 97          |
| 24              | 23          | 56              | 48          | 95-96           | 73          | 144-145         | 98          |
| 25-26           | 24          | 57-58           | 49          | 97-98           | 74          | 146-147         | 99          |
| 27              | 25          | 59              | 50          | 99              | 75          | 148-149         | 100         |
| 28              | 26          | 60-61           | 51          | 100-101         | 76          | 150-152         | 101         |
| 29              | 27          | 62              | 52          | 102-103         | 77          | 153-154         | 102         |
| 30              | 28          | 63-64           | 53          | 104-105         | 78          | 155-156         | 103         |
| 31-32           | 29          | 65              | 54          | 106-107         | 79          | 157-157         | 104         |
| 33              | 30          | 66-67           | 55          | 108             | 80          | 159-161         | 105         |
| 34              | 31          | 68              | 56          | 109-110         | 81          | 162-163         | 106         |
| 35              | 32          | 69-70           | 57          | 111-112         | 82          | 164-166         | 107         |
| 36              | 33          | 71              | 58          | 113-114         | 83          | 167-168         | 108         |
| 37-38           | 34          | 72-73           | 59          | 115-116         | 84          | 169-170         | 109         |
| 39              | 35          | 74              | 60          | 117-118         | 85          | 171-173         | 110         |

Example 2: The adjusted primary plant sample sizes for fields from less than 1 to 10 acres in size are shown in the following table:

| Number of acres | Sample Size |
|-----------------|-------------|
| Less than 1     | 1           |
| 1               | 1           |
| 2               | 2           |
| 3               | 3           |
| 4               | 4           |
| 5               | 5           |
| 6               | 6           |
| 7               | 7           |
| 8               | 8           |
| 9               | 9           |
| 10              | 10          |

7.5 Sampling agents should always walk at right angles to the rows of plants if possible, beginning at one point of the lot and walking towards another point on the opposite side of the lot. If the lot is too dense for this to be possible, the sampling agent should take all reasonable steps to ensure that a sample is collected that represents a homogeneous composition of the lot by avoiding edges and thoroughfares.

7.6 While walking through the growing area, the sampling agent should cut at least “n” inflorescences (the flower or bud of a plant) based on the acreage of the growing area , at random but convenient distances. Avoid collecting sample specimens from the borders of the field/greenhouse.

7.7 The cut should be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that develops into a bud) of the flowering top of the plant.



7.8. Utilize paper sample bag(s) for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings,  $n$ , as calculated by 7.4, or in the Example Tables 1 and 2. If one bag cannot accommodate the minimum number of cuttings due to lot size, the sample may be divided into multiple bags, but must be clearly labeled in such a way that each bag is appropriately matched with the corresponding lot. (i.e. For lot 101 with three corresponding sample bags: 101 1 of 3, 101 2 of 3, 101 3 of 3.)

7.9. Seal each bag and record the sample number or other documentation as required by the State or Tribe.

7.10 A sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.

## 8. Sample identification:

8.1 The sampling agent should seal each bag and record the sample identification number. The sample should also be identified with the following information: Sampling agent contact information; name and contact information of the producer; producer hemp license or authorization number; date of sample; and lot, subfield, or other identifier as provided by the USDA Farm Service Agency; any other information that may be required by States, Tribes, Law Enforcement Authorities, mail delivery services, Customers or groups of customers.

Note: In accordance with 7 CFR 1.901(e), the contents of this document does not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

**Laboratory Testing Guidelines**  
**U.S. Domestic Hemp Production Program**  
**Issued January 15, 2021**

**Purpose:**

1. Standard testing procedures are specified for samples taken in accordance with the Sampling Procedures for the USDA Hemp Production Program to measure the total delta-9 tetrahydrocannabinol (THC) concentration levels of samples on a dry weight basis.
2. The results are intended to measure the total THC concentration of composite hemp samples collected from a “lot” of hemp crop acreage designated by a hemp producer and as reported to USDA as required under the USDA Hemp Production Program. The purpose of the measurements is to determine whether the total THC concentration of the tested material is within the acceptable hemp THC level.

**Scope:**

1. Hemp grown under a USDA, State, or Tribal hemp production plan is subject to sampling and compliance testing for THC concentration. Certain producers, including research institutions and facilities growing immature plants may have different testing requirements depending on the applicable State or Tribal plan and regulations.
2. Tests shall measure the total THC concentration in a sample submitted to a laboratory for analysis. The laboratory will perform chemical analysis on the sample using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC.
3. The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
4. Laboratories shall calculate and include the Measurement of Uncertainty (MU) when they report THC concentration test results. “Measurement of uncertainty” is defined as “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.” USDA does not establish or standardize an upper or lower boundary for general use by laboratories to calculate a measurement of uncertainty. MU is typically not standardized, but rather is controlled using test methods controlled by performance standards (e.g., AOAC Standard Method Performance Requirements 2019.003 that can be found at <https://www.aoac.org/resources/smpr-2019003/>).
5. Hemp testing laboratories are not required to be ISO accredited, although USDA strongly encourages adherence to the ISO 17025 standard.
6. It is the responsibility of the licensed producer to pay any fees associated with testing or retesting.

## **Summary of Practice:**

1. As required under USDA Hemp Production Program regulations, laboratories that analyze hemp to determine total delta-9 tetrahydrocannabinol THC should meet the following standards:

1.1. Laboratory quality assurance protocols must ensure the validity and reliability of test results;

1.2. Analytical method selection, validation, and verification protocols must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;

1.3. Protocols for demonstrating testing validity must ensure consistent, accurate analytical performance;

1.4. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and

1.5. Testing protocols must include an effective disposal procedure, in accordance with USDA guidelines, for non-compliant samples that do not meet the requirements of this part.

1.6. Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

1.7. Sample preparation of pre- or post-harvest sample shall require grinding of the sample to ensure homogeneity of plant material prior to testing.

1.8 At a minimum, analytical testing of samples for total delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Secretary in writing. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC), and the test result must reflect the total available THC derived from the sum of the THC and THCA content. Current testing methodologies meeting these requirements include gas chromatography and liquid chromatography. Other methods may be approved if they meet the regulatory requirements.

1.9 The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.

2. Laboratories should create an internal SOP specific to testing and retesting hemp and should have the SOP available upon request for inspection. If Sampling Agents are employed,

contracted or utilized by a laboratory, the laboratory shall meet all training requirements under the USDA, State, or Tribal hemp production program.

3. After December 31, 2022, laboratories approved for THC testing must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13.

4. In order to provide flexibility to States and Tribes in administering their own hemp production programs, alternative testing protocols will be considered, if they are comparable and similarly reliable to the baseline mandated by section 297B(a)(2)(ii) of the Agricultural Marketing Act of 1946 and established under the USDA plan and procedures. Approval for alternative testing protocols must be requested of USDA in writing and approved in writing by USDA, provided they meet the requirements of this guidance.

#### **General Guidelines:**

General Sample Preparation and Testing Procedures should be conducted as follows:

1. Laboratory receives sample.
2. Dry sample to remove the majority of water.
3. Grind entire sample including leaves, seeds, twigs, and stems.
4. Separate sample into “Test” and “Retain” specimens.
5. Package and store the “Retain” specimen(s) until needed.
6. Analyze the “Test” specimen.
7. Determine moisture content or dry to a consistent weight.
8. Perform chemical analysis.
9. Calculate total THC concentration on a dry weight basis. Test results should be reported on a dry weight basis.

#### **Sample Preparation Guidelines:**

Samples should be prepared for testing as follows:

1. Once the composite sample is received by the laboratory, the laboratory should dry the composite sample until brittle in a manner that maintains the THC level of sample.



2. If it is not possible to dry the composite sample within 24 hours from the time of sample arrival, the sample should be held in a freezer at approximate -20°C or lower until the sample is dried.

3. After the initial drying step, the laboratory should grind the entire sample including leaves, seeds, twigs, and stems using centrifugal rotor mill or other method as appropriate. All samples received should be ground, regardless of whether they consist of the initial intact material or “remediated” (shredded or blended) material, as allowed under USDA regulations.

4. The laboratory should create both a “Test Specimen” and a “Retain Specimen for reanalysis and/or confirmation as needed.” One sample part should be selected for analysis and labeled “Test Specimen.” The other sample part should be marked “Retain Specimen” and should be packaged and stored in a secured place. The testing laboratory internal SOP should define the sample size and distribution of “Test Specimen” and “Retain Specimen.”

5. Samples should be stored in secured locations, in appropriate containers (e.g., bottles, tubes, vials, etc.).

6. The laboratory should then either determine moisture content or dry the test specimen to a consistent weight. Samples should be dried to a consistent loss (typically 5- 12% moisture content) so that the test can be performed on a dry weight basis, meaning the percentage of THC by weight, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.

6.1. The sample can be dried to a consistent weight to remove all water and then be tested on a dry weight basis. If the sample is not to be extracted immediately after drying, it should be stored in a desiccator.

6.2. Alternatively, the sample can be analyzed for moisture content and this moisture content can be factored into the total THC result to give a dry weight basis.

7. Extraction of the sample should occur as soon as possible from the time of sample arrival. Extracts should be stored in secured locations, in appropriate containers (e.g., bottles, tubes, vials, etc.).

### **Testing Guidelines:**

1. The laboratory will perform chemical analysis on the sample using post- decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC.

2. Testing methodologies meeting these requirements include those using gas chromatography and liquid chromatography.

3. The laboratory will then calculate total THC concentration on a dry weight basis.

**Testing Methods:**

1. The total available THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis.

2. Alternative testing protocols will be considered if they are comparable to the baseline mandated by the 2018 Farm Bill and established under the USDA plan and procedures. Approval to use alternative sampling and testing procedures must be requested in writing and approved in writing by USDA.

3. Laboratories shall use appropriate, validated methods and procedures for all testing activities and shall evaluate measurement of uncertainty.

4. Laboratories should meet the AOAC International standard method performance requirements for Quantitation of Cannabinoids in Plant Materials of Hemp (Low THC Varieties Cannabis sp.) (SMPR 2019.003) for selecting an appropriate method.

5. The range of estimated uncertainty is reported as a  $\pm$  value and is the same unit as the hemp THC threshold (e.g.  $\pm 0.05$ ), following best practices for significant figures and rounding.

6. There are resources available for defining, guiding, and calculating measurement uncertainty. They include the GUM, ISO, and Eurachem. Once the expanded measurement uncertainty (U) is determined, then the confidence interval can be calculated around a designated threshold. (i.e. the hemp threshold of 0.3% THC.)

**Test Results Exceeding 0.3% THC Concentration:**

1. Any sample test result where the total THC concentration of the sample is higher than the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed under the Act.

1.1. If the results of a test conclude that the THC concentration levels of a sample are higher than the acceptable hemp THC level, the laboratory will promptly notify the producer and the State, Tribal, or Federal regulatory licensing body.

2. Retest Procedures.

2.1. Any hemp program licensee may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error.

2.2. If this occurs, the laboratory shall follow the same procedures as to conduct the initial test.

2.3. The licensee requesting the retest of the second sample will pay the cost of the test.

2.4. The retest results shall be issued to the licensee requesting the retest, and a copy shall be provided to USDA or its agent.

**Information Sharing:**

1. Laboratories performing THC testing for compliance purposes of this program are required to share test results with the licensed producer, the appropriate State Department of Agriculture or Tribe, and USDA. Laboratories shall report all test results, whether passing or failing, to USDA using AMS Form 22 available here: <https://www.ams.usda.gov/rules-regulations/hemp/information-laboratories>.

2. Laboratories shall indicate that a test result is for “official compliance” purposes on lab testing results for compliance purposes. Laboratories shall not mark test results for monitoring of THC levels throughout the growing season as for “official compliance” purposes. Laboratories shall retain a legible copy for inspection upon request of all test results for official compliance purposes for a period of three (3) years from date of analysis.

3. Laboratories may provide test results to licensed producers in whatever manner best aligns with their business practices, but producers must be able to produce a legible copy of test results upon request for inspection purposes. For this reason, providing test results to producers through a web portal or through electronic mail, so the producer will have ready access to print the results when needed, is preferred.

4. Results of testing conducted throughout the growing season for the purposes of monitoring THC concentration should not be submitted to USDA. Only the official test result for compliance testing purposes shall be submitted to the USDA.

**Testing Remediated Hemp Samples:**

1. Licensees can “remediate” hemp following an initial failed test by shredding plant material in a product called “biomass.” In this instance, laboratories will receive samples of remediated biomass material for retesting.

2. For remediated testing, the laboratory shall follow the same procedures used to conduct an initial test, as described in this document.

3. For remediated testing, the laboratory shall follow the same reporting requirements as described in this document. A licensee must maintain a legible copy of the remediated test results, available for inspection, for a period of three years from receipt of the testing results provided by the laboratory. Therefore, laboratories are encouraged to provide such documentation to licensees.

**References:**

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