

CHAPTER 6-19 HEMP PRODUCTION

GENERAL PROVISIONS

6-19-1 Purpose of this Chapter

The purpose of this chapter is to establish the requirements for persons to grow/produce hemp for commercial purposes as authorized by the Agriculture Improvement Act of 2018, also known as the Farm Bill. This chapter includes licensing requirements. Licensing is required for persons to grow/produce hemp under this chapter.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-2 Findings

Hemp has historically been used in a wide range of consumer and industrial products. The total retail value of Hemp products in the United States has been estimated at over \$500 million. Prior to the passage of the Farm Bill, Hemp was treated as a controlled substance, largely because the federal government considered Hemp difficult to distinguish from marijuana and was reluctant to issue permits for its production. The Farm Bill authorized the production of Hemp as a legal, agricultural commodity, allowing Tribes to have the primary regulatory authority over the production of hemp on Indian Lands. A system of monitoring and regulation of Hemp is a prerequisite to obtaining approval from the USDA on the Tribes 'Hemp Plan' and subsequent permitting of Hemp on the Confederated Tribes of the Colville Reservation.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

DEFINITIONS

6-19-3 Definitions

As used in this Chapter:

- (a) "Acceptable Hemp THC level" means, for the purposes of compliance with this chapter, when laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol 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 the Tribe's hemp plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41 %. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" is not meant to affect either the statutory definition of hemp in the 2018 Farm Bill (codified at 7 U.S.C. § 16390(1)) or the definition of "marihuana" in the Controlled Substances Act (codified at 21 U.S.C. § 802(16)).
- (b) "AMS" means the Agriculture Marketing Service for the US Department of Agriculture.
- (c) "Applicant" means a person or entity who submits an application for a license to participate in the Confederated Tribes of the Colville Reservation's Hemp Program.
- (d) "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 total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- (e) "Continuous licensing" means annual licenses renewed in such a way that the licensee is continuously operating under a valid license.
- (f) "Controlled Substance Act" (CSA) as codified in 21 U.S.C 801 et seq.

- (g) “Corrective Action Plan” means a plan proposed by the Program and agreed to by the licensed hemp producer to correct a negligent violation or non-compliance with this Chapter.
- (h) “DEA” means the Drug Enforcement Administration of the United States Department of Justice.
- (i) “Disposal” means the Hemp is collected and destroyed on site through approved methods including plowing, tilling, or disking plant material into the soil; mulching, composting, chopping or brush mowing plant material into green manure; burning plant material; burying plant material into the earth and covering with soil.
- (Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
- (j) “Entity” means any commercial entity engaged in the production of hemp.
- (k) “FSA” means the Farm Service Agency.
- (l) “Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place.
- (m) “Hemp” means all parts and varieties or cultivars of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, containing a THC concentration of 0.3 percent or less by dry weight. Hemp does not include plants of the genera *Cannabis* that meet the definition of “marijuana” as defined in CTC 3-1-175(h).
- (n) “Hemp Plan” means the Tribes plan submitted and approved by the USDA outlining the Tribes plan for the monitoring and regulation of hemp.
- (o) “Hemp Program” AKA “Program” means a governmental department of the Confederated Tribes of the Colville Reservation authorized to administer the Tribes Hemp Program.
- (p) “Indian lands,” “Reservation,” and “Tribal lands” mean all lands of the Confederated Tribes of the Colville Reservation that meet the definition of Indian lands as defined in 18 U.S.C. §1151 and 25 U.S.C. §2703(4).
- (q) “Key participant” means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field or shift managers.
- (r) “Legal Description” means a method of locating or describing land in relation to the public land survey system, such as section, township and range.
- (s) “Licensee” means any person or entity that holds a license from the Program to produce hemp. Licensee or producer may be used interchangeably.
- (t) “License Number” means the number assigned to a licensee by the Program and must comply with the license numbering scheme set by the USDA. All license numbers must begin with the Tribe six character code assigned by the Department of the Interior, P03101.
- (u) “Lot” means a contiguous area in a field, greenhouse, or indoor structure containing the same variety or strain of hemp throughout the area.
- (v) “Marijuana” means those varieties or cultivars of the species *Cannabis sativa* L. having a THC content in excess of 0.3%.

- (w) “Negligent” means the failure to exercise the level of care that a reasonably prudent person would exercise.
- (x) “Non-Compliant Hemp” is hemp that exceeds the Acceptable Hemp THC level of containing a THC concentration of 0.3 percent or less by dry weight. Non-Compliant and Non-Conforming may be used interchangeably.
- (y) “Produce” means to grow hemp plants for market or for cultivate for market.
- (z) “Producer” means any person who has been given a license from the Hemp Program to produce hemp crops. Producer or licensee may be used interchangeably.

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- (aa) “Registered land area” means a contiguous land area, including greenhouses, and storage areas registered with the Program as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, processing area, or storage area so long as those fields, greenhouses, processing areas, or storage areas are at the same physical address.
- (bb) “Report” means any data, statistics, or information required to be provided to the Program by a licensee under a hemp permit.
- (cc) “Sampling Agent” means an employee trained through the Tribal Hemp program who is collecting samples for total delta-9 tetrahydrocannabinol concentration level testing, as outlined in 6-19-10. The Program shall maintain and make available to producers information on all sampling agent.
- (dd) “Tribes” means the Confederated Tribes of the Colville Reservation.
- (ee) “USDA” means the United States Department of Agriculture, which is the Governmental body within the Federal Government responsible for establishing and administering the program for the production of hemp in the United States.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-4 Enforcement Authority

- (a) The administration of this Chapter shall be vested in the Hemp Program, which may employ such number of employees as in its judgment are required from time to time.
- (b) No employees of the Hemp Program shall have ever been convicted of a felony crime in any jurisdiction, nor have been convicted in any jurisdiction of any substance-related offense (other than alcohol), regardless of the degree of the offense, within ten years of employment.
- (c) For the purpose of carrying into effect the provisions of this Chapter according to their true intent or of supplying any deficiency therein, the Program may make such regulations and issue such orders not inconsistent with the spirit of this Chapter as are deemed necessary or advisable. All such regulations and orders shall have the same force and effect as if incorporated into this Chapter. Without limiting the generality of the foregoing provisions it is declared that the power of the Program to make regulations and issue orders shall include the power to:
 - 1. Administer all provisions of this Chapter;

2. Conduct all inspections and tests required under this Chapter, including conducting annual inspections of a random group of procedures to verify that hemp is not produced in violation of the Chapter;
 3. Set fees and prescribe forms to carry out the purposes of this Chapter and any regulations established hereunder; and
 4. Arrange for contracts with outside entities, including but not limited to purposes of testing hemp and conducting background checks, in accordance with the standards set forth in this Chapter.
- (d) No employee of the Program shall be personally liable in any action at law for damages sustained by any person because of any action performed or done or omitted to be done by the Program or any employee of the Program in the performance of his duties and the administration of this Chapter.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-5

Hemp License Application

- (a) A person or entity wishing to produce hemp must submit an application for a license on a form provided by the Program. Hemp production is prohibited until the Program issues a license.
- (b) Each applicant for a license to produce hemp shall submit a signed, complete, accurate, and legible application on a form provided by the Program. Applications must be submitted at least ninety (90) days prior to commencing hemp operations regulated under this chapter. To maintain continuous licensing, an applicant must submit an application for a renewal license at least thirty days prior to the expiration of the previous license. The application must include the following information:
 1. The name, principal business location address, telephone number, and email address (if applicable) of the applicant;
 2. For business entities, the full name of the entity, address of the principal business location, full name, title and email address (if applicable) of the key participants, EIN number, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent on the Colville Reservation;
 3. The legal description (section, township, and range) in which any proposed field, greenhouse or other site where hemp is produced is located;
 4. The geospatial location coordinates of any proposed field, greenhouse or other site where hemp is produced; and,
 5. The applicant's signature accepting the license terms and conditions, including the following:
 - A. That the applicant agrees to allow the Program to inspect and sample a producer's licensed operations and must have unrestricted access to all hemp plants, plant parts, grain and seeds, and all land and facilities used by a producer to produce or store hemp and all documents and records pertaining to the licensee's hemp producer operations.
 - B. That the applicant agrees and understands any information obtained by the Program regarding a licensee's production of hemp may be provided to the USDA, Tribal and federal law enforcement agencies and fire and rescue agencies by the Program without further notice to the licensee.
 - C. That the applicant is responsible to pay any fees established by the Program applicable to the licensed activities, including payment for any required

inspections and testing. Samples may be taken at the Program's discretion for testing.

D. That the applicant or any Key Participant of the applicant's business has not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in the United States or any other country within ten years of the date of the application; and,

E. That the applicant agrees to submit and be financially responsible for a criminal background check. *See 6-19-6*

- (c) In addition to the completed application form, each applicant must submit a nonrefundable application or renewal fee. If the application is incomplete or does not include the application/renewal fee, the application may be deemed incomplete.
- (d) Any applicant who materially falsifies any information contained in the application will be ineligible to participate in the Tribe's Hemp Program.
- (e) All licenses are valid for one year from date of issuance, and may be renewed in successive years. Each annual renewal shall require the payment of application renewal and license renewal fees, and a criminal background check as required by 6-19-6.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-6 Background checks of Applicants

(a) All applicants must submit and pay for a criminal background check. If the application is for a business entity, criminal background checks must be completed for each key participant.

(b) A person or key participant in a business entity with a prior felony drug conviction within ten years of applying for a license not eligible for the license.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-7 Producer's Reporting Requirements

(a) All producers shall report hemp crop acreage to the FSA and shall provide, a minimum, the following information:

1. Legal description or street address and, to the extent practicable, geospatial location for each lot, greenhouse, building or site where hemp is produced. All locations where hemp is produced must be reported to FSA.
2. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
3. Total acreage of hemp planted, harvested and disposed.
4. License number.

(b) Each field inspection may include an audit of the licensee's records and data, including the system used by the licensee to preserve required classes of records and data in a timely manner, using a format that facilitates meeting the terms and conditions of the license.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-8 Program's Reporting Requirements

- (a) **Hemp Producers Report.** The Program shall submit through the USDA's online platform, H.eM.P, by the first of each month, a report providing the contact information and the status of the license issued for each producer. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the following information: For each new producer who is an individual, the full name of the individual, license number, business address, telephone number, and email address (if available);
1. For each new producer who is an entity, the full name of the entity, the principal business location address, license number, EIN number, and the full name title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report;
 2. For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information;
 3. Legal description or street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, that information shall be provided for all production sites;
 4. The total acreage of hemp planted and harvested; and,
 5. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

The Hemp Producer Report (AMS-23) is available at: <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-forms>

- (b) **Hemp Disposal Report.** If a Producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance section 6-19-3 (i) of the Chapter. . The Program shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials. If the first of the month fall on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the following information:
1. The name and contact information (including address) for each producer subject to disposal during the reporting period;
 2. The producer's license identifier;
 3. The location information, including the lot number, location type, and geospatial location or other location description for the production are subject to disposal;
 1. Laboratory test results report for the lot;
 2. Information on the agent handling the disposal, and if completed by the Agency, an attestation of the agents stating all of the marijuana was disposed and the method of disposal;
 3. The disposal completion date; and
 4. The total acreage of disposed plants and materials.

The Tribal Hemp Disposal Report (AMS-24) is available at: <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-forms>

- (c) **Annual Report.** The Program shall submit an annual report to USDA through the online platform H.eM.P. The report form shall be submitted by December 15th of each year and contain the following information:
1. The total planted acreage;
 2. The total harvested acreage; and
 3. The total acreage disposed.

The Tribal Hemp Annual Report (AMS-25) is available at: <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-forms>

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-9 Record Keeping and Retention

Records, data and reports required to be collected or maintained by the Program or licensee must be retained for a period of at least three years from the expiration date of the license that was in effect at the time the records were generated.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-10 Sampling Procedure

- (a) Samples must be collected within 30 days prior to the harvest, for total delta-9 tetrahydrocannabinol concentration level testing. Producers may not collect their own samples; samples must be collected by a sampling agent.
- (b) The number of individual plants required to be selected for sampling is dependent upon the size of the growing area. The USDA's sampling guidelines are hereby incorporated.; <https://www.ams.usda.gov/rules-regulations/hemp/rulemaking-documents>
- (c) Samples shall 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 could develop into a bud) of the flowering top of the plant.
- (d) The method used for sampling must be sufficient 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 ensure that a representative sample is collected that represents a homogeneous composition of the lot
- (e) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site if possible.
- (f) Sampling agents shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license. Samples shall not be comingled.
- (g) A producer shall not harvest the cannabis crop prior to samples being taken.

6-19-11 Testing Procedures

- (a) Testing shall be completed by a DEA-registered testing lab not affiliated with any producer licensed with the Program. Test results will be reported to both the USDA and the Program.
- (b) The testing must be able to accurately identify whether the sample contains a delta9 THC content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of THC-A in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this Section include gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported by a dry weight basis.
- (c) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with the Program and this Chapter. Lots tested and not certified by the DEA-registered lab at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce. The Program shall ensure the lot is disposed of in accordance 6-19-13. The Program will notify USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.
- (d) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:
 - 1. Laboratory quality assurance must ensure the validity and reliability of test results;
 - 2. Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
 - 3. The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - 4. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of the Program Plan; and
 - 5. An effective disposal procedure for hemp plants that are produced that do not meet the requirements of the Program Plan. The Program will be in accordance with DEA reverse distributor regulations found at 21 CFR § 1317.15, as amended.
- (e) Measurement of uncertainty 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.
- (f) The Program shall promptly notify the USDA through the online platform H.eM.P of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in the 11 Program Plan and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-12 Hemp Testing Fees

- (a) Fees for hemp tests are the responsibility of the licensee.

- (b) No renewal licenses will be issued until all test fees due the Program are paid in full.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-13 Destruction of Non-Compliant Hemp

- (a) Any hemp that tests higher than the acceptable hemp THC concentration must be disposed of or destroyed.
- (b) The disposal or destruction must be conducted by either a DEA registered reverse distributor or onsite.
- (c) Onsite destruction must be verified by the Program, through in person verification and must render the hemp/crop non-retrievable or non-ingestible, using one of the following, USDA approved disposal methods:
1. Plowing Under
 2. Mulching/ Composting
 3. Disking
 4. Bush Mower/Chopper
 5. Deep Burial
 6. Burning
- (d) Once the non-complaint Hemp/Crop is disposed of, the licensee must provide the Program a completed “Colville Tribes Hemp Program –Hemp Disposal Report” ,” that the Program will then submit as required to the USDA.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-14 Noncompliance With Chapter 6-19, Hemp Production and Program Requirements- Negligent Violation-Corrective Action Plan

- (a) A licensee shall be subject to adverse action for violating this Chapter and/or any requirement of the Tribe’s Hemp Program. A negligent violation includes: :
1. Failing to provide a legal description of land where the hemp is produced;
 2. Failing to obtain a license from the Program; or,
 3. Producing Cannabis with a delta-9 tetrahydrocannabinol concentration of more than 1.0% dry weight basis.
- (b) A licensee shall not receive more than one negligent violation per growing season.
- (c) A licensee that violates the provisions of this chapter, or any requirements set by the Tribe’s Hemp Program may be subject to having their license suspended or revoked, or be subject to a corrective action plan.
- (d) A licensee shall be required to comply with a corrective action plan established by the Tribal Hemp Program to correct a negligent violation. The corrective action plan will include, at a minimum:
1. A reasonable date by which the hemp producer shall correct the negligent violation;
 2. A requirement that the hemp producer periodically report to the Program their compliance with the corrective action plan for a period of at least two calendar years.
 3. The Program shall conduct an inspection of the registered land area to ensure compliance with the corrective action plan.
- (e) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

- (f) Any licensee who violates the provisions of this chapter or any requirements set by the Tribe's Hemp Program three (3) times in a five (5) year period shall be ineligible to produce/grow hemp for a period of 5 years beginning on the date of the third violation.

(Amended 11/18/2021, Resolution 2021-821, Certified 11/22/2021)
(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-15 Culpable Violations

If it is determined a violation of this Chapter was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, the Program will immediately report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-16 License Denial, Suspension, or Revocation, and Right to Adjudicative Proceeding

Upon notice by the Program to an applicant to deny a license or notice to a licensee to suspend or revoke a license, a person may request an adjudicative proceeding under CTC 2-4, the Tribal Administrative Procedure Act.

(Amended 9/9/2021, Resolution 2021-666, Certified 9/13/2021)

6-19-17 Venue for Legal Action

The venue for any legal action under this chapter shall be the Tribal Court of the Confederated Tribes of Colville Reservation at Nespelem, Washington.

6-19-18 Sovereign Immunity

Nothing in this Chapter is intended or shall be construed as a waiver of the sovereign immunity of the Tribes; and no manager, officer, or employee of the Board shall be authorized, nor shall he or she attempt, to waive the immunity of the Tribes.

(Enacted 07/06/2017, Resolution 2017-372, Certified 07/11/2017)