

CHEROKEE CODE CHAPTER 150
ADMINISTRATIVE RULE-MAKING

Pursuant to the authority in Cherokee Code §§ 150-4 and 113-1(c), the Division of Agriculture and Natural Resources hereby adopts the following as administrative rules to be codified into the Cherokee Administrative Regulations:

Cherokee Administrative Regulations
Title 16 Hemp Regulations
Chapter 1 Hemp Regulatory Plan

16 CAR 1.01 – Short Title

This chapter may be referred to as the “EBCI Hemp Regulatory Plan.”

16 CAR 1.02 – Findings

- (a) The Tribe, by and through the Cannabis Commission created via resolution by Tribal Council, hereby finds and declares that:
- (1) Hemp regulations are needed in order to protect the health, safety, and welfare of the Tribe by becoming the primary regulatory authority over the production and processing of hemp; and
 - (2) It is in the best interests of the Tribe to have regulations governing the production and processing of hemp on Tribal lands; and
 - (3) The Agriculture Improvement Act of 2018 (commonly referred to as the “Farm Bill of 2018”) allows for the production and processing of hemp, subject to regulations, so long as the hemp has a THC concentration equal to or less than the acceptable hemp THC level allowed under federal law.

16 CAR 1.03 – Purpose

- (a) The purpose of these regulations is to assert the Tribe’s sovereignty and to:
- (1) Authorize the Division of Agriculture and Natural Resources to manage the Tribe’s hemp regulatory plan; and
 - (2) Regulate hemp as an agricultural commodity in compliance with Tribal and federal law; and
 - (3) Promote economic development through the production and processing of hemp and the development of new commercial markets for farmers and businesses on Tribal lands; and
 - (4) Enable the Tribe, its licensees, and any affiliated institutions of higher education to conduct research regarding the production and processing of hemp.

16 CAR 1.04 – Definitions

The following terms have the associated meaning when used in this chapter. If not defined in this chapter, the term has the meaning described to it in 7 CFR Part 990.1 if defined therein.

- (a) “Acceptable hemp THC level” means when a laboratory tests a sample and 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.
- (1) 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%. This sample is

within the acceptable hemp THC level because 0.3% is within the range. The sample is considered hemp for purposes of this chapter.

- (b) “Applicant” means a person, or a person who is an authorized agent for a business entity, who submits an application to participate in the Eastern Band of Cherokee Indians Hemp Program.
- (c) “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 THC concentration on a dry weight basis as not yet been determined.
- (d) “Commercial sales” means the sale of product in the stream of commerce at retail or at wholesale, including sales on the Internet.
- (e) “Consumable product” means a hemp product intended for human or animal consumption.
- (f) “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully, or recklessly.
- (g) “Cultivate” means to plant, water, grow, or harvest a plant or crop.
- (h) “Division” means the Eastern Band of Cherokee Indians Division of Agriculture and Natural Resources.
- (i) “Dry weight basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance.
- (j) “GPS” means global positioning system used to determine the precise ground position of a place or object.
- (k) “Handle” means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plans or plant parts for further processing. “Handle” also includes the disposal of plants that are not hemp as determined by chemical analysis.
- (l) “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.
- (m) “Harvest lot identifier” means a unique identifier used by the Division to identify the harvest lot.
- (n) “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.
- (o) “Hemp crop” means one (1) or more unprocessed hemp plants or plant parts.

- (p) “Hemp grower” and “hemp producer” means a person licensed under this chapter by the Division to cultivate hemp.
- (q) “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.”
- (r) “Hemp product” means a finished product with the 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.
 - (1) 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.
- (s) “Institution of higher education” has the meaning assigned to it by 20 U.S.C. § 1001 and 25 U.S.C. § 1801(a)(5) et seq.
- (t) “Intended for consumption” means intended for human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.
- (u) “Key participant” means a sole proprietor, a partner in a partnership, or a person with executive managerial control in a corporation or other business entity.
 - (1) A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This does not include non-executive managers such as farm, field, or shift managers.
- (v) “Laboratory” means laboratories which use appropriate, validated methods and procedures for all testing activities and who also evaluate measurement of uncertainty, meet the Associate of Official Agricultural Chemists (“AOAC”) International standard method performance requirements for selecting an appropriate method, and are registered by the Drug Enforcement Agency (“DEA”) to conduct chemical analysis of controlled substances.
- (w) “Licensee” has the same meaning as “hemp grower” and “hemp producer” as that term is defined in this section.
- (x) “Marijuana” 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 higher than three-tenths of one percent (0.3%) on a dry weight basis.
 - (1) The term “marijuana” does not include hemp.
- (y) “Measurement of uncertainty” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- (z) “Negligence,” “negligent,” or “negligently” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with this chapter and all related laws, regulations, and policies.

- (aa) “Non-commercial personal possession or use” means possession of hemp without the intent to transfer it to another outside the user’s household.
(1) This term does not include the sale, trade, or any other type of commercial use.
- (bb) “Person” means a natural person, corporation, foundation, organization, business trust, estate, limited liability company, corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a state or local government entity.
- (cc) “Postdecarboxylation” means, in the context of testing methodologies for THC concentration levels in hemp, a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis.
(1) The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. This can also be calculated using a high-performance liquid chromatograph technique, which keeps THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample
- (dd) “Process” means to convert any portion of a hemp crop into a hemp ingredient, hemp product, or into other marketable form.
- (ee) “Reasonable efforts” means that a hemp producer exercised a level of care that a reasonably prudent person would have exercised when the hemp producer took the necessary steps and precautions to produce hemp, such as certifying seed, using other seed that has a reliably grown compliant plants in other parts of country, or engaging in other best practices, yet still produced plants that exceeded the acceptable hemp THC level, and the plant does not have a THC concentration of more than 0.5% on a dry weight basis.
- (ff) “Registered land area” means a contiguous lot, parcel, or tract of land registered with the Division on which a licensee cultivates hemp.
(1) A registered land area may include land and buildings that are not used to cultivate hemp.
- (gg) “THC” means delta-9 tetrahydrocannabinol, which concentration level is measured post-decarboxylation on a dry weight basis. THC is the primary psychoactive component of cannabis.
- (hh) “Tribe” and “Tribal” mean and refer to the Eastern Band of Cherokee Indians.
- (ii) “Tribal land” means the Qualla Boundary and any land subject to the jurisdiction and control of the Tribe.
- (jj) “USDA” means the United States Department of Agriculture.
- (kk) “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

16 CAR 1.05 – Compliance with federal law

Nothing in this chapter authorizes any person to violate any federal law or regulation.

16 CAR 1.06 – Policies

- (a) The Division shall set the policies and procedures needed under this chapter for the regulation of hemp. The Division shall develop forms as necessary to carry out this chapter. The Division's policies and procedures may not be in conflict with this chapter. Any substantive revisions to this chapter must be approved by the USDA as provided at 7 CFR Part 990.4(b).
- (b) The Division may set and charge reasonable fees for licensure, renewal, testing, and other such fees as may be needed. The Division shall maintain a fee schedule that is available to the public.

16 CAR 1.07 – Licensees

- (a) All hemp growers, producers, handlers, applicants, and their agents are bound to all Tribal laws and Division policies. By applying for a license under this chapter, the applicant voluntarily submits to the jurisdiction of the Tribe and the Tribal Court. All hemp produced, processed, and sold on Tribal land is governed by this chapter.
- (b) Licenses are non-transferrable.

16 CAR 1.08 – License Application

- (a) Any person desiring to produce or cultivate hemp on tribal lands must obtain a license from the Division prior to engaging in such activity. A person must have a license at all times while engaging in such activity. A valid license is a requirement for engaging in such activity.
- (b) No license is needed by any person for non-commercial personal possession or use of hemp or hemp products.
- (c) Persons seeking to obtain a license shall provide to the Division:
 - (1) A completed license application form;
 - (2) The legal description, street address, and/or GPS location sufficient for locating the registered land area(s) and each field, greenhouse, and structure where the person cultivates hemp or intends to cultivate hemp;
 - (3) Contact information for the applicant and each key participant, including full name, date of birth, and title of all key participants and authorized representatives, EIN for any business entity, address of the principal business location, the business telephone number, and email address of each key participant; and
 - (4) Sufficient criminal background check information for the applicant, key participant information on a form developed by the Division, and a notarized attestation that the applicant and all key participants do not have any factors disqualifying them from having a license pursuant to this chapter.
 - (5) Farm number issued by the USDA Farm Service Agency for the registered land area(s) or evidence of income from a farming operation from the previous two years. The following are acceptable forms of evidence of a farming operation if income from crop or animal production for the applicant is shown:
 - (i) For individual filers, Schedule F of the Form 1040, U.S. Individual Income Tax Return;
 - (ii) For S corporation filers, Page 1 and Schedule B, of the Form 1120S, U.S. Income Tax Return for S Corporation;
 - (iii) For C corporation filers, Page 1 and Schedule K, of the Form 1120, U.S. Corporation Income Tax Return; or

- (iv) For partnership filers, Page 1 of the Form 1065, U.S. Return of Partnership Income and Schedule F of the Form 1040, U.S. Individual Income Tax Return.
- (d) The Division shall perform all background checks.
 - (1) Background checks shall include a criminal history, including a Federal Bureau of Investigation Identity History Summary, and Tribal criminal history.
 - (2) The Division shall determine which employees, officers, or agents of the applicant will be key participants for the applicant and therefore subject to background checks.
 - (3) When the applicant is an entity, the Division shall perform and review background checks for each key participant of the entity.
- (e) Ineligible applicants.
 - (1) A person that negligently violates a state, tribal, or USDA hemp plan three times in a five-year period shall be ineligible to have a license for a period of five years from the date of the third violation.
 - (2) Any person convicted of a felony relating to a controlled substance under tribal, state, or federal law in the ten-year period prior to the application date shall be ineligible to have a license or be a key participant in an entity which has a license.
 - (i) Exception: A person who was lawfully growing hemp under the Farm Bill of 2014 before December 20, 2018, and whose conviction occurred before that date.
 - (3) Any person who intentionally or knowingly falsified information to the Division shall be ineligible to have in a license or to be a key participant in an entity which applies for a license.

16 CAR 1.09 Licensee Recordkeeping and Reporting

- (a) Licensees must report any changes to contact information or any other information listed in the application to the Division in writing within 15 calendar days.
- (b) Licensees who are entities must report any change in control, change in business structure, sale of the entity, or change in control within 15 calendar days.
- (c) The licensee must identify the designated harvest lot using the harvest lot identifier.
- (d) Licensees shall report the total number of acreage of hemp planted, harvested, and disposed to the Division.
- (e) Planting Report: Within 15 calendar days after planting, the licensee shall submit a Planting Report to the Division that includes the GPS coordinates and a map showing the location and acreage or square feet of hemp planted.
- (f) Pre-Harvest Notification: At least 15 calendar days prior to harvest, the licensee shall submit a Pre-Harvest Notification to the Division. The notification shall include the projected harvest date(s) and location(s) of each variety of hemp cultivated within a registered land area. The licensee must notify the Division immediately of any changes in the reported harvest dates in excess of seven calendar days.
- (g) Post-Harvest Report: Within 15 calendar days after harvest is completed, the licensee shall submit a Post-Harvest Report to the Division. The report shall include the actual harvest date(s) and locations(s) of each variety of hemp harvested within a registered land area. A licensee is not required to document the removal of male hemp plants on a Post-Harvest Report if the male hemp plants are destroyed or utilized on a registered land area and are not transferred or sold.
- (h) The licensee shall ensure that the DEA-registered laboratory which conducts the test samples shall report those test results to the USDA. The report shall contain, at minimum, the licensee's license number, the name of the licensee, the licensee's business address, the lot identification number for the sample tested, the name and DEA registration number

of the laboratory, the date of the test and report, identification of any retest, and the test result.

- (i) The licensee shall retain all documentation of sampling and testing for at least three years in a manner such that it can be readily provided to the Division upon request.

16 CAR 1.10 – Division Recordkeeping and Reporting

- (a) The Division shall assign each licensee a unique licensee identifier in a format compliant with the USDA.
- (b) The Division shall retain for a period of three years all information required to be collected under this chapter for every registered land area approved by the Division.
- (c) The Division shall submit the following reports to the USDA:
 - (1) Monthly hemp producer report;
 - (i) For individual licensees, this report shall contain, at minimum, the full name of the licensee, license number, business address, telephone number, and email address (if available)
 - (ii) For entity licensees, this report shall contain, at minimum, the full name of the entity, the principal business location address, license number, and full name, title, and email address (if available) for each key participant and employee for which a background check is conducted.
 - (iii) The Division shall report for each licensee what was included in a previous report and which information has changed or been updated.
 - (iv) The legal description for each registered land area for each license, status of each license, the period covered by the report, and an indication that there were no changes during the current reporting period for a licensee (if applicable).
 - (2) Disposal report;
 - (i) This report shall contain, at minimum, the name and address, license number, location information (such as lot number, location type, GPS, or other location descriptor for the production area subject to disposal), information on the agent handling disposal, date disposal was completed, and total acreage for each licensee subject to a disposal during the reporting period.
 - (3) Annual report
 - (i) This report shall contain, at minimum, total planted acreage, total harvested acreage, and total acreage disposed.
- (d) The Division shall use the information it collects under this section for purposes of reporting and information-sharing with the USDA. All reports shall comply with the requirements of 7 CFR Part 990.70, as amended. All such information shall be submitted to the USDA in a format that is compatible with the USDA's information sharing system.
- (e) The Division shall fulfill information-sharing obligations under the USDA hemp regulations, including requiring licensees to report their hemp acreage to the USDA Farm Service Agency pursuant to 7 CFR Part 990.7, including:
 - (1) Street address and to the extent practicable GPS location for each lot/greenhouse where a licensee grows hemp;
 - (2) Total hemp acreage and indoor greenhouse square footage; and
 - (3) Division license number and harvest lot identifier.
- (f) The Division shall collect information reported by licensees and report it to the Agricultural Marketing Service and the Seed Regulatory & Testing Division.

16 CAR 1.11 – Procedure for Inspecting, Sampling, and Testing

- (a) The Division shall conduct regular inspections of licensees to ensure compliance with this chapter, applicable federal regulations, and acceptable hemp THC level.
 - (1) Inspections shall be completed at least annually, must be randomly selected, and performed without notice.
 - (2) Inspectors shall be authorized by the Division, in accordance to USDA and tribal laws and regulations.
 - (3) During a scheduled inspection, the licensee or an authorized representative of the licensee must be present at the registered land area.
 - (4) During the inspection the inspectors must be provided with complete and unrestricted access during business hours to all cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all cannabis plants, and all locations listed for the license.
 - (5) Plant and plant materials from one lot cannot be commingled with plant and plant materials from other lots.
 - (6) All samples collected by the Division shall become the property of the Division without compensation to the licensee for such samples.
- (b) Cannabis may not be harvested before sampling is completed under this section.
- (c) A licensee shall arrange for and ensure sampling of each harvest lot no more than 15 calendar days prior to harvest, or within such other period of time allowable under USDA hemp regulations at 7 CFR Part 990, et seq., for the purpose of ensuring that the harvest lot does not exceed acceptable hemp THC level. If a licensee fails to complete harvest within 15 calendar days of the sample collection or within such other period of time allowable under USDA hemp regulations at 7 CFR Part 990, et seq., a secondary pre-harvest sample of the harvest lot shall be required to be submitted for testing.
- (d) A harvest lot that has not been sampled and tested shall not be removed from the registered land area.
- (e) Testing required by this chapter shall be conducted by DEA-registered or federally-designated laboratories accredited to ISO/IEC 17025, the standard published by the International Organization for Standardization titled “General requirements for the competence of testing and calibration laboratories,” or an accreditation standard approved by the Division because it uses appropriate, validated methods and procedures for all testing activities and who also evaluate measurement of uncertainty as controlled by the USDA regulation.
- (f) For each sample tested pursuant to this section, the licensee shall obtain from the laboratory a certificate of analysis that includes, at a minimum, the following information:
 - (1) General information identifying that the hemp that is the subject of the certificate of analysis is the product of a sample tested by the laboratory;
 - (2) The date the sample was taken, the date the testing was performed, and the testing methodology used to analyze the sample;
 - (3) The THC concentration contained in the sample and the measurement of uncertainty; and
 - (4) The procedure for testing was able to accurately identify wither the sample contains a THC level that is within the acceptable hemp THC level;
 - (5) The testing included a validated testing methodology that uses postdecarboxylation or other similarly reliable methods with the approval of the Agricultural Marketing Service and Seed Regulatory & Testing Division or otherwise permitted under the USDA hemp regulations at 7 CFR Part 990, et seq.
 - (6) A statement indicating whether the sample contained a THC concentration not in excess of the acceptable hemp THC level.
 - (7) The methodology shall consider the potential conversion of delta-9 tetrahydrocannabinolic acid (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, or shall abide by other such testing requirements permitted under the USDA hemp regulations at 7 CFR Part 990, et seq.

- (g) The testing methodologies meeting the requirements of paragraph (f)(4) of this section include, but are not limited to, gas or liquid chromatography with detection.
- (h) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the harvest lot represented is not in compliance with this chapter.
- (i) Harvest lots tested and not certified by a DEA-registered laboratory, or such other laboratory permitted under the USDA hemp regulations at 7 CFR Part 990 et seq., at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce and the licensee shall ensure the harvest lot is disposed of in accordance with 7 CFR Part 990.27 and this chapter.
- (j) Testing for purposes of detecting the concentration levels of THC shall meet the following standards:
 - (1) Testing shall determine the total THC concentration on a dry weight basis;
 - (2) Laboratory quality assurance must ensure the validity and reliability of test results;
 - (3) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for the purpose) and that the laboratory can successfully perform the testing;
 - (4) The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - (5) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this chapter;
 - (6) An effective disposal procedure for cannabis that does not meet the requirements of this chapter;
 - (7) The disposal procedure must be in accordance with DEA reverse distributor regulations found at 21 CFR 1317.15 and Tribal law; and
 - (8) Measurement of uncertainty must be estimated and reported with the test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty;
 - (9) The measurement of uncertainty shall be included as part of any test results;
- (k) The Division shall promptly notify the USDA by certified mail or electronically of any occurrence of plants or plant material that exceed the acceptable hemp THC level, and attach the records demonstrating the appropriate disposal of all those plants and/or plant material in the harvest lot from which the representative samples were taken.
- (l) One sample per harvest lot shall be collected pursuant to USDA Sampling guidelines for hemp growing facilities to determine if the harvest has an acceptable hemp THC level and can enter the stream of commerce.
- (m) The method used for sampling from the flower material:
 - (1) Must ensure that a representative sample is collected that represents a homogenous composition of the harvest lot;
 - (2) Must be sufficient at a confidence level of 95% that no more than 1% of the plants would exceed the acceptable hemp THC level;
 - (3) The licensee must have an official authorized by the Division collect samples from the flower material for testing;
 - (4) Such official must be given complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and 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 license.

- (5) The licensee or an authorized representative of the licensee shall be present at the registered land area during sampling.
- (n) A licensee may apply to the Division for retesting and/or resampling of any non-compliant harvest lots, which may be approved or denied at the Division's discretion.
- (o) Nothing in this section shall prevent a licensee from voluntarily collecting and testing sample for quality assurance and research and development purposes.

16 CAR 1.12 – Procedure for Disposal

- (a) Plant and plant parts that test higher than the acceptable hemp THC level shall be disposed of by the licensee in compliance with the Division policies and all applicable tribal and federal laws.
- (b) If a sample of a harvest lot tests higher than the acceptable hemp THC level, the harvest lot shall be disposed of by the licensee in compliance with the Division policies and all applicable tribal and federal laws.
- (c) The disposal method shall be in compliance with DEA Laboratory requirements, and the federal Controlled Substances Act requirements that are applicable.
- (d) All plant and plant parts not disposed of pursuant to this section must be destroyed in a manner approved of and verified by the Division.
 - (1) The Division will authorize and arrange for the plants or plant parts to be collected for destruction by a person authorized under the federal Controlled Substances Act to handle controlled substances, such as a DEA-registered reverse distributor, or a duly authorized federal, state, local, or Tribal law enforcement officer.
 - (2) The Division may authorize other disposal techniques that transition the non-compliant cannabis into a non-retrievable or non-ingestible form, including:
 - (i) "Plowing Under," which is using curved plow blades to rotate subsoil to surface and bury the crop below;
 - (ii) "Mulching/Composting," which is cutting and blending the crop with manure or other biomass material;
 - (iii) "Disking," which is leveling of the field using a tow-behind disk implement to amend soil directly from the crop;
 - (iv) "Bush Mower/Chopper," using a commercial lawn mower to shred and mix the crop so that it decomposes into the soil;
 - (v) "Deep Burial," which is trenching the field so that the crop and surface soil is buried at a depth of at least 12 feet;
 - (vi) "Burning," which is setting fire to clear all the plant material.
- (e) The licensee is responsible for the costs of disposal.
- (f) Licensee shall have 15 calendar days from the date of notification of test results of the harvest lot in excess of the acceptable hemp THC level to contact the Division in writing and apply for retesting, resampling, or to propose a method of disposal.
- (g) Plants or plant parts to be disposed of shall not be removed from the registered land area without prior written approval of the Division.
- (h) Harvest lots tested and not certified by a DEA-registered laboratory, or such other laboratory permitted under the USDA hemp regulations at 7 CFR Part 990 et seq., at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce and the licensee shall ensure the harvest lot is disposed of in accordance with 7 CFR Part 990.27 and this chapter.
- (i) The licensee shall provide any and all evidence requested by the Division to verify disposal pursuant to this chapter within 15 calendar days.

16 CAR 1.13 – Prohibited products

The following products and services shall be unlawful and a violation of this chapter:

- (a) Any cannabis, hemp, or hemp product in excess of acceptable hemp THC level shall not be sold to the public or publicly offered for sale.
- (b) Any cannabis or hemp cultivated or produced without a license under this chapter.

16 CAR 1.14 – Negligent violations

- (a) A person shall be subject to this section if the Division determines that person has negligently violated any requirement of this chapter, including by negligently:
 - (1) Failing to provide an accurate legal description of the land upon which the licensee cultivates hemp;
 - (2) Failing to obtain a license from the Division before engaging in applicable hemp-related activity governed by this chapter;
 - (3) Failing to reasonably cultivate, handle, store, or transport all hemp and other plants; and
 - (4) Producing or failing to dispose of cannabis with a THC concentration in excess of the acceptable hemp THC level.
- (b) A person that negligently violates this chapter shall not, as a result of that violation, be subject to any criminal enforcement action by the federal, state, or tribal government.
- (c) A person that negligently violates this chapter three times in a five-year period shall be ineligible to have a license for a period of five years from the date of the third violation.
- (d) Licensees do not commit a negligent violation if they make reasonable efforts to grow hemp and the plant(s) does not have a THC concentration of more than 0.5% on a dry weight basis, or such other percentage on a dry weight basis permitted under the USDA hemp regulations at 7 CFR Part 990, et seq.
 - (1) The licensee shall not be relieved of the duty to dispose of non-compliant plants or plant parts.

16 CAR 1.15 - Negligent violation corrective action plans

- (a) A licensee who commits a negligent violation shall comply with a plan established by the Division to correct the negligent violation, including:
 - (1) A reasonable date by which the licensee shall correct the negligent violation and the cause(s) or circumstance(s) which led to the negligent violation; and
 - (2) A requirement that the licensee shall periodically report to the Division on the compliance with this chapter for a period of not less than two years from the date of the negligent violation.
- (b) The Division shall conduct random inspections and sampling to determine if the licensee has correctly implemented the corrective action plan.

16 CAR 1.16 – Culpable mental state greater than negligence

- (a) If the Division determines that a person violated this chapter with a culpable mental state greater than negligence, the Division shall immediately report the person to:
 - (1) The U.S. Attorney General for the Western District of North Carolina; and
 - (2) The Cherokee Police Department.

16 CAR 1.17 – Other violations

In addition to the reporting requirements, a person found by the Division to have violated this chapter with a culpable mental state greater than negligence shall also be subject to license suspension, license revocation, or monetary civil penalties set forth in the policies of the Division.

16 CAR 1.18 – Sovereign Immunity

Nothing in this chapter shall be interpreted as a waiver of the Tribe's sovereign immunity.

16 CAR 1.19 – Severability

If any portion of this chapter or its application is held invalid by a court of competent jurisdiction, the remainder of the chapter and its application shall remain valid and severable from the invalid portions.

The requirements of Cherokee Code § 150-4 have been satisfied. The proposed adoption of the rules was published in the January 6-12, 2021 issue of the Cherokee One Feather. A public hearing on the proposed rules was held on January 13, 2021. The period for public comment was open for at least 20 days, from January 6, 2021 to January 26, 2021. Any and all public comments received have been considered by the Division of Agriculture and Natural Resources.

This rule is now adopted and effective immediately.

This the _____ day of January, 2021.

Joseph Owle
Secretary
Division of Agriculture and Natural Resources