

TITLE 6. INTERGOVERNMENTAL RULES AND REGULATIONS

CHAPTER 13. HEMP REGULATORY CODE

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TITLE 6. INTERGOVERNMENTAL RULES AND REGULATIONS

CHAPTER 13. HEMP REGULATORY CODE

PART I. GENERAL PROVISIONS

Section 6.13.01 Short Title

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

Section 6.13.02 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.

Section 6.13.03 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.

Section 6.13.04 Industrial Hemp Authorized as an Agriculture Crop

Hemp (also referred to as Industrial Hemp) that has no more than 0.3 percent 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.

Section 6.13.05 Jurisdiction

- A. For purposes of the Hemp Regulatory Code, the Nez Perce Tribe includes all lands within the exterior boundaries of the Nez Perce Reservation, and Indian country as defined in 18 U.S.C. § 1151 (a), (b), & (c). 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 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 jurisdiction of the Nez Perce Tribe.

Section 6.13.06 Sovereign Immunity

Nothing in this Code shall be construed to limit the jurisdiction of the Nez Perce Tribe, the Tribal Court, or the Tribal Police, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents, or authorize any form a prospective waiver of such sovereign immunity.

Section 6.13.07 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.

Section 6.13.08 Compliance With Federal Law

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

Section 6.13.09 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.

Section 6.13.10 Reserved

Section 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 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 this 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” 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. “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.
- M. “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.
- N. “GPS” *means* global positioning system.
- O. “Grow Site” *has the same meaning* as “Registered Land Area” as that term is defined in this Section, below.
- P. “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.
- Q. “Harvest Lot Identifier” *means* a unique identifier used by the Nez Perce Tribe to identify the Harvest Lot.
- R. “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.

- S. “Hemp Crop” *means* one (1) or more unprocessed Hemp plants or plant parts.
- T. “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.”
- U. “Hemp Processor” *means* any person processing, manufacturing, extracting, or producing Hemp Products.
- V. “Hemp Producer” *means* any person growing, cultivating, handling or harvesting hemp, hemp crops, hemp seeds, or hem propagules on the Nez Perce Reservation, and who is licensed by the Agriculture Office to Cultivate or Handle Hemp on the Nez Perce Reservation.
- W. “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.
- X. “Hemp Program” *means* the cannabis regulatory framework established under this Code with respect to Hemp.
- Y. “Hemp Seller” *means* any person marketing, distributing, or selling, wholesale or retail, hemp or hemp-based products.
- Z. “Industrial Hemp” *has the same meaning* as “Hemp” as that term is defined in this Section, above.
- AA. “Institution of Higher Education” *has the meaning* assigned to it by 20 U.S.C. § 1001.
- BB. “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.
- CC. “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. 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.
- DD. “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.

- EE. “Licensee” *has the same meaning* as “Hemp Producer” as that term is defined in this Section, above.
- FF. “NPTEC” *means* the duly elected Nez Perce Tribal Executive Committee, which is the governing body of the Nez Perce Tribe.
- GG. “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.
- HH. “Process” *means* to convert any portion of a Hemp Crop into a Hemp Ingredient, Hemp Product, or other marketable form.
- II. “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.
- JJ. “THC” *means* tetrahydrocannabinol and *has the same meaning* as delta-9 THC, measured post-decarboxylation.
- KK. “Variety” *means* a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

Section 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.

Section 6.13.13 Reserved

PART II. RESERVED

Section 6.13.14 Reserved

Section 6.13.15 Reserved

Section 6.13.16 Reserved

Section 6.13.17 Reserved

Section 6.13.18 **Reserved**

Section 6.13.19 **Reserved**

PART III. LICENSING

Section 6.13.20 **Annual License Requirements**

- A. **GENERAL.** 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.
- B. **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 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 6.13.22 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 January 1, 2019.
 - 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. The Agriculture Office may determine the appropriate method for obtaining the criminal history report for Applicants under this Code.

f. 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;

g. Application fees shall not cover or include the cost of the criminal background checks.

4. FEE. An application fee as set forth below;

5. ACKNOWLEDGMENT. An acknowledgment of the licensing terms and conditions;

6. GROW SITE REGISTRATION APPLICATION; and

7. OTHER. Any other information or disclosure required to be submitted by Federal regulation.

C. 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:

1. The street address and legal description of each field, greenhouse, building, or site where Hemp will be Cultivated;

2. If Hemp is Cultivated or is intended to be Cultivated in a field:

3. The GPS coordinates provided in decimal of degrees and taken at the approximate center of the Grow Site;

4. The number of square feet or acres of each Grow Site; and

5. A map of the production area showing clear boundaries of the Grow Site;

6. If Hemp is Cultivated or is intended to be Cultivated in a greenhouse or other building:

a. The GPS coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building composing the Grow Site;

- b. The approximate dimension or square feet of the greenhouse or other building composing the Grow Site; and
- c. A map of the production area showing clear boundaries of the Grow Site.

7. 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.

8. 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.

D. **TERMS AND CONDITIONS ACKNOWLEDGMENT.** By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:

1. Any information provided to the Agriculture Office may be provided to law enforcement agencies without further notice to the Applicant;

2. The Applicant or Licensee shall allow and fully cooperate with any inspection and sampling that the Agriculture Office deems necessary;

3. 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;

4. The Applicant or Licensee shall submit all required reports by the applicable due date specified by the Agriculture Office;

5. 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

6. 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.

E. **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 6.13.22 below or other Agriculture Office issued rule.

F. **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.

Section 6.13.21 Reserved

Section 6.13.22 Ineligible for a 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;
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.

Section 6.13.23 Reserved

Section 6.13.24 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.

Section 6.13.25 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.

Section 6.13.26 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.

Section 6.13.27 Compliance and Enforcement

- A. Licenses cannot be assigned or transferred to another Person, unless first approved by the Agriculture Office in writing.
- 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.

Section 6.13.28 Reserved

Section 6.13.29 Reserved

PART IV. REGISTERED LAND AREA CONTROLS

Section 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.

Section 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.

Section 6.13.32 Reserved

Section 6.13.33 Reserved

Section 6.13.34 Reserved

PART V. TRANSPORTATION

Section 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 United States Agriculture Office of Agriculture.
- 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.

Section 6.13.36 **Reserved**

Section 6.13.37 **Reserved**

Section 6.13.38 **Reserved**

Section 6.13.39 **Reserved**

PART VI. RECORDS AND REPORTS

Section 6.13.40 **Agriculture Office Reports**

- A. The Agriculture Office may at its discretion require 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 AMS, 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).

Section 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

Section 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.

Section 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 information sharing system, 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. Information on the agent who handled the disposal;
 - e. Disposal completion date; and
 - f. 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 information sharing system, to the USDA, the following:
1. Total planted acreage;
 2. Total harvested acreage; and
 3. Total acreage disposed.

- C. Hemp Producer Report to FSA: In addition to providing it to the Agriculture Office, each Hemp Producer is responsible for submitting the following information to the USDA Farm Service Agency (FSA) not more than 30 days after the date on which the information is received:
1. Street address, and to the extent practicable geospatial location, for each Harvest Lot or indoor growing facility where such producer grows Hemp;
 2. Total acreage or indoor square footage dedicated to Hemp production; and
 3. 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 USDA.

Section 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.

Section 6.13.45 **Reserved**

Section 6.13.46 **Reserved**

Section 6.13.47 **Reserved**

Section 6.13.48 **Reserved**

Section 6.13.49 **Reserved**

PART VII. INSPECTIONS, SAMPLING, AND TESTING

Section 6.13.50 Annual Inspections

A. The Agriculture Office shall conduct annual inspections of, at a minimum, a random sample of Licensees (Hemp Producers) and all Registered Land Areas 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 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.

6. No Hemp Producer shall be subject to more than one (1) inspection each twelve (12) month period.

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.

Section 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.

- 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.

Section 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, 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 or other similarly reliable methods.
- 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.

Section 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 tetrahydrocannabinolic 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, but are not limited to, 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.

Section 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 fifteen (15) 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.

- 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 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.
- 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, which may be approved or denied at the Agriculture Office's discretion.

Section 6.13.55 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.

Section 6.13.56 Disposal of Non-Compliant Plants and Hemp Products.

- A. Hemp that tests higher than the Acceptable Hemp THC Level shall be disposed of by the Hemp Producer in compliance with Agriculture Office rules and all applicable federal, tribal and local laws, regulations, rules and other requirements.
- B. If a Harvest Lot tests higher than the Acceptable Hemp THC Level, the Harvest Lot shall be promptly disposed of by the Hemp Producer according to the following disposition:
 - 1. Hemp stalks (denuded) may be harvested, processed and used for fiber and/or any other lawful purpose; and
 - 2. Hemp seed may be harvested, Processed, and rendered non-viable for food products, provided it is sourced from Hemp grown with seed certified pursuant to the Agriculture Office's Seed Certification Program, or that has otherwise received certification by other seed agencies recognized by the Agriculture Office.
- C. All Hemp plant material not disposed of pursuant to subsection B(1) and B(2) above must be destroyed or utilized on site in a manner approved of and verified by the Agriculture Office.
- D. Hemp Producers shall have fourteen (14) calendar days from the date of notification of test results higher than the Acceptable Hemp THC Level to contact the Agriculture Office in writing and apply for retesting or propose a method for destruction or on-site utilization. Methods of destruction or on-site utilization may include, but are not limited to, incineration, composting, tilling into the soil, or grazing by livestock.
- E. Hemp subject to destruction or on-site utilization pursuant to this Section shall not be removed from the Registered Land Area unless otherwise authorized by the Agriculture Office.
- F. With the exception of Hemp seeds rendered non-viable pursuant to this rule, all Hemp subject to destruction or on-site utilization pursuant to this rule shall not be added to or Processed into any Consumable Product.

- G. The Hemp Producer shall provide any and all evidence requested by the Agriculture Office to verify disposal to the satisfaction of the Agriculture Office.

Section 6.13.57 Reserved

Section 6.13.58 Reserved

Section 6.13.59 Reserved

PART VIII. VIOLATIONS

Section 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. 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 1.0 percent 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.
- C. 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.

Section 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.

Section 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.

Section 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.