

## **Requirements for State and Tribal Hemp Plans and License Numbering Scheme**

The following is a basic summary of the plan requirements for State and Tribal hemp production programs. Please see Sections 990.3, 990.6, and 990.7 in the Final Rule for the exact requirements.

Throughout this document we refer to the term “lot.” A lot is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. There are no minimum or maximum limits on the size of an individual lot. Hemp producers determine the farm location, field acreage or indoor square feet, and strain of hemp planted throughout the lot and report this information to USDA at a [Farm Service Agency \(FSA\) service center](#). Designation of the lot is critical come harvest as the samples taken from the land area designated as the lot determine compliance of **all** hemp harvested from the **entire** lot. (See guidelines on sampling [HERE](#))

When producers report their lot designations to FSA, FSA will determine the appropriate numbering designation using FSA terminology such as “State,” “County,” “Farm,” “Tract,” “Field,” and “Subfield.” FSA will provide the producer with this information, which we refer to as “lot numbers,” and which the producer must provide to the State or Tribe. It is critical for States and Tribes to collect this information from licensed producers since lot numbers are required on several USDA forms.

### **1. Plan to maintain relevant producer and land information**

- Collect, maintain and provide to USDA contact information for each hemp producer licensed or authorized in the state or territory of the tribal government (whichever applicable). [990.3 (a) (1)]
- Provide contact information for each hemp producer covered under the plan including name, address, telephone number, and email address (if available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of the key participants, an email address (if available), and EIN number of the business entity. This information can be provided via the AMS-23 form via mail, fax, or email. [990.3 (a) (1) (i)]
- Provide a legal description of the land where hemp is produced in the state or tribal territory. [990.3 (a) (1) (ii)]
- Maintain and report to USDA status of licensed producers (and any changes) and license or authorization numbers of producers. [990.3 (a) (1) (iii)]

### **2. Plan for accurate and effective sampling and testing using post-decarboxylation or similarly reliable methods [990.3 (a) (2)]:**

- Standard sampling and performance-based sampling procedures 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.

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

**A. Procedures to either sample all lots or do performance based sampling:**

1. Sampling all lots [990.3 (a) (2) i-iii]:

- The standard sampling method must be used by all producers, except for producers operating under a State or Tribal plan that includes a performance-based sampling requirement.
- Every lot and every single growing location must be sampled and tested.

2. Performance-based sampling [990.3 (a) (2); 990 C. Sampling for Total THC Performance Based Sampling]:

- Performance-based sampling protocols may consider seed certification processes, other process that identify varieties that have consistently resulted in compliant hemp plants, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors.
- Producers that produce hemp for research, along with the research institution itself, must obtain a license from a State or Tribal Government.
- Hemp produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level.
- Research institutions and producers growing hemp for research purposes shall ensure the disposal of all noncompliant plants.
- Research institutions and producers growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of noncompliant plants.
- Research institutions that handle “hot” hemp must follow CSA requirements for handling marijuana.

## **B. Procedures on sampling agents:**

- Procedures to conduct sampling and testing within 30 days prior to the anticipated harvest date; samples must be collected by a sampling agent producers may not collect samples from their own growing facilities. [990.3 (a) (2) (i)]
- Procedures for collecting samples from the flowering tops of plants which shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud). [990.3 (a) (2) (ii)]
- Procedures to ensure the sampling method used represents a homogenous composition of the lot. [990.3 (a) (2) (iii)]
- Procedure/statement/allowance to require the producer or an authorized representative of the producer to be present at the growing site during sample collection. [990.3 (a) (2) (iv)]
- Procedures to allow for representatives of the sampling agency to have complete and unrestricted access during business hours to all hemp and other cannabis plants and all land, buildings, etc. used for cultivation, handling, and storage. [990.3 (a) (2) (v)]
- Procedures to ensure that a producer does not harvest any cannabis prior to samples being taken. [990.3 (a) (2) (vi)]
- Procedures to ensure sampling agents are trained using USDA, state, or tribal training and the information is maintained by the state or tribal government. [990.3 (a) (2) (vii)]

## **C. Procedures on testing:**

- Provides a definition for “acceptable hemp THC level.” [990.1]
- Procedures to require testing for delta-9 THC concentration. The procedures must require accurate identification of the acceptable hemp THC level. Testing methods must include but are not limited to: 1) Post decarboxylation or other similarly reliable method; 2) Consideration of potential conversion of delta-9 THCA into THC and test result measure total available THC (THC + THCA); 3) Use of gas or liquid chromatography with detection; 4) Procedures to determine total THC concentration on a dry weight basis. [990.3 (a) (3)]
- Procedures to ensure the hemp plant material from one lot not be commingled with hemp plant material from other lots. [990.3 (a) (3) (ii)]

- Procedures to require hemp testing laboratories to adhere to standards of performance for detecting THC concentration, including Measurement of Uncertainty (MU). [990.3 (a) (3) (iii) (A through G)]
- Requirement to only use DEA registered labs after December 31, 2022. [990.3 (a) (3) (iii) (H)]
- Procedures requiring testing laboratories to report test results to USDA for determining compliance with this part. [990.3 (a) (3) (iii) (H) (4)]

### **3. Plan for disposal procedures**

- Procedures for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level. [990.3 (a) (6)]
- Procedures to notify USDA of non-compliant plants and disposal of those plants from the lot where representative samples were taken. Test results must be included. [990.3 (a) (6)]

### **4. Plan for remediation procedures**

- Procedures to ensure effective disposal or remediation of plants produced in violation of part 990; only those successfully remediated crops will be allowed to enter the stream of commerce, and all other remaining non-compliant crops must then be disposed. [990 (a) (6) (i - iii); 990 E. Disposal and Remediation of Non-Compliant Plants]

### **5. Plan for inspection procedures**

- Procedure for conducting annual inspections of random sample of licensed producers to verify that hemp is not produced in violation of this part. [990.3 (a) (7)]

### **6. Plan for collection of information**

- Procedure for submitting the information described in 990.70 to the Secretary not more than 30 days after the date on which the information is received. [990.3 (a) (8)]
- Procedure for producers licensed under state and tribal government plans to share information with USDA, Agricultural Marketing Service (AMS), and Farm Service Agency (FSA) including: 1) hemp crop acreage; 2) reporting total acreage of hemp planted, harvested, and disposed; 3) license or authorization number; 4) street address; 5) geospatial location(s) of each lot or greenhouse where hemp will be produced; 6) acreage of greenhouse or indoor square footage dedicated to the production of hemp. [990.3 (a) (10) and 990.7]

**7. Plan to comply with enforcement procedures**

- Procedures to contain provisions relating to negligent producer violations as defined under this part; producers shall not receive more than one negligent violation per growing season. [990.6 (b)]
- Provides for corrective action plan for negligent violations: 1) failure to provide legal description of land; 2) failure to obtain a license; 3) produces cannabis with THC exceeding 1.0 percent. [990.6 (b)]
- Procedures to provide for the correction of negligent violations: 1) a reasonable date to correct the violation; 2) reporting requirements for 2 years from date of the negligent violation; 3) violations are not subject to federal, state, tribal, or local government criminal enforcement action; 4) provides that a negligent violation 3 times within a 5-year period is ineligible to produce hemp for a period of 5 years from the date of the 3rd violation; 5) state or tribal government shall conduct inspections to determine if corrective action plan has been implemented. [990.6 (c)]
- Procedures for producer violations made with a culpable mental state greater than negligence: Producer shall be reported to the U.S. Attorney General and the chief law enforcement officer of the state or tribal government. [990.6 (d)]
- Procedures for addressing felonies: 1) provides for a 10-year ineligibility restriction for persons with a State or Felony conviction relating to a controlled substance; 2) provides for controlled substance felony conviction exception for participants in state hemp pilot program authorized under the 2014 Agricultural Act before December 20, 2018; 3) procedures for business entities to determine which participants are considered to be “key” or have executive managerial control. [990.6 (e)] [[Legal opinion on authorities for hemp production](#)]
- Procedures stating that any persons who materially falsify any information in their application shall be deemed ineligible to participate in the program. [990.6 (f)]

**8. Certification that the state or tribal government (whichever applicable) has resources and personnel to carry out required Farm Bill practices and procedures. [990.3 (a) (9)]**

**9. Plan may include other practices or procedures as long as consistent with this part and the Act. Plan may include requirements more stringent than this part or the Act. [990.3 (a) (10) (b) (1) and (2)]**

## **License Numbering Schemes for State and Tribal Hemp Production Plans**

**States must use the following format when assigning license or authorization numbers:**

[ANSI/FIPS State Code\_State License #]

ANSI/FIPS Codes may be found here:

<https://www.census.gov/library/reference/code-lists/ansi/ansi-codes-for-states.html>

For example, for hemp producers in Alabama, the license or authorization numbers would be:

01\_0001, 01\_0002, 01\_0003, etc.

**Tribes must use the following format when assigning license or authorization numbers:**

[BIA Tribal Code\_Tribal License #]

For example, for hemp producers licensed under the Flandreau Santee Sioux Tribe, the license or authorization numbers would be:

A03341\_0001, A03341\_0002, A03341\_0003, etc.

BIA tribal authorization codes may be viewed here:

<https://flh.fhwa.dot.gov/programs/ttp/documents/bia-6codes.pdf>

**USDA will use the following format when assigning license numbers:**

[USDA\_ ANSI/FIPS Code OR BIA Tribal Code\_USDA License Number]

For example, for a producer under the USDA plan and growing site in Florida would be:

USDA\_12\_0001, USDA\_12\_0002, USDA\_12\_0003, etc.