

Why is the Yurok Tribe updating the Hemp Ordinance?

The Yurok Tribe adopted a Hemp Ordinance in 2020, under the 2018 U.S. Farm Bill rules. That plan is on file with the U.S. Department of Agriculture, and authorizes the Yurok Tribe to issue licenses and maintain jurisdiction over the inspections, sampling, and control of hemp production within the jurisdiction of the Yurok Tribe.

In 2021, federal regulations were updated. For the Yurok Tribe Hemp Plan to be effective, and ensure that any proposed or actual hemp cultivation within Yurok's jurisdiction is under Yurok control, rather than county, state or federal rules, the plan on file with the USDA must be updated to conform with those federal changes.

Is hemp being grown on the Yurok Reservation?

No licensees are registered, and no hemp cultivation is being permitted at this time.

Yurok Tribal Code, Agriculture

YUROK TRIBE HEMP ORDINANCE

Pursuant to its authority under Article IV, Section 5, of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance regulating hemp.

GENERAL PROVISIONS²

SECTION 22001.	Short title.....	2
SECTION 22002.	Legislative findings.....	2
SECTION 22003.	Purpose	2
SECTION 22004.	Sovereign immunity preserved.....	2
SECTION 22005.	Severability.....	2
SECTION 22006.	Effective date.....	2
SECTION 22007.	Repeal of conflicting ordinance provisions	3
SECTION 22008.	Licensee agreement	3
SECTION 22009.	Definitions	3
CHAPTER 1. POLICIES AND PROCEDURES		5
SECTION 220010.	Policies and procedures set by the Department.....	5
SECTION 22101.	Recordkeeping and reporting.....	6
SECTION 22102.	Licensee recordkeeping and reporting	7
SECTION 22103.	Procedure for inspecting, sampling, and testing.....	8
SECTION 22104.	Procedure for disposal	11
CHAPTER 2. YUROK TRIBE HEMP PROGRAM		14
SECTION 22201.	Application	14
CHAPTER 3. PROHIBITED PRODUCTS		15
SECTION 22301.	Products not to be sold to members of the public.....	15
CHAPTER 4. VIOLATIONS AND CORRECTIVE ACTION PLANS		15
SECTION 22401.	Negligent violation	15
SECTION 22402.	Negligent violations defined.....	16
SECTION 22403.	Negligent violation corrective action plans	16
SECTION 22404.	Culpable mental state greater than negligence violations	16
SECTION 22405.	Other violations	16
CHAPTER 5. MATERIALS INCORPORATED BY REFERENCE		16
SECTION 22501.	Incorporation by reference.....	16

GENERAL PROVISIONS

SECTION 22001. Short title

This ordinance shall be referred to as the “Yurok Tribe Hemp Ordinance.”

SECTION 22002. Legislative findings

The Yurok Tribal Council hereby finds and declares that:

- (a) This Yurok Tribe Hemp Ordinance was adopted in order to protect the health, safety, and welfare of the Tribe by becoming the primary regulatory authority over the production of hemp; and
- (b) Within the territories of the Tribe, having an ordinance governing the growing and processing of hemp is in the Yurok Tribe’s best interest; and
- (c) The Agriculture Improvement Act of 2018 (commonly known as the 2018 Farm Bill) allows for the growth and processing of hemp, subject to regulations, so long as the hemp has a THC concentration of less than the acceptable hemp THC level.

SECTION 22003. Purpose

The purpose of this ordinance is to assert Tribal sovereignty and to:

- (a) Create a Department of Agriculture to manage the Yurok Tribe Hemp Program; and
- (b) Regulate hemp as an agricultural commodity in compliance with Tribal and federal law; and
- (c) Promote economic development for the Yurok Tribe through the production/processing of hemp and the development of new commercial sales for farmers and businesses through the sale of hemp products; and
- (d) Enable the Yurok Tribe, its licensees, and any potentially affiliated institutions of higher education, to conduct research regarding the production of hemp within the territories of the Tribe; and
- (e) Promote this territory’s hemp industry; and
- (f) Encourage and empower research into hemp production and the creation of hemp products at institutions of higher education and in the private sector.

SECTION 22004. Sovereign immunity preserved

In accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

SECTION 22005. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 22006. Effective date

This ordinance shall take effect immediately upon its adoption by Tribal Council.

SECTION 22007. Adopted by emergency legislative act

This ordinance is adopted by emergency legislative action pursuant to section 1.125.090 of the Public Hearing Ordinance.

Commented [HC1]: Can this be deleted?

SECTION 22008. Repeal of conflicting ordinance provisions

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control. This ordinance is, however, intended to be read in conjunction with certain existing ordinances, including, but not limited to: the Yurok Cultural Resources Protection Ordinance and the Yurok Tribe Environmental Protection Code.

SECTION 22009. Licensee agreement

All hemp growers, producers, processors, handlers, applicants, and agents are bound to all Yurok ordinances, codes, laws, and Department policies and procedures. By applying for a license, hemp growers, producers, processors, handlers, applicants, and agents submit to the jurisdiction of the Yurok Tribe and the Yurok Tribal Court. All hemp grown, processed, produced, and handled within the territories of the Tribe is controlled by all Yurok ordinances, codes, laws, and Department policies and procedures. All codes are available at the Yurok Justice Center or online at <https://Yurok.Tribal.Codes>.

SECTION 22010. Definitions

- (a) **“Acceptable hemp THC level”** for the purpose of compliance with the requirements of the Yurok Tribal 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 compliance with this ordinance. For purposes of clarity, if 0.3% or less is within the distribution or range, then the sample will be considered to be hemp for the purpose of compliance with the requirements of this ordinance.
- (b) **“AMS Administrator”** means the Administrator for the USDA’s Agricultural Marketing Service (“AMS”)
- (c) **“Applicant”** means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Yurok Tribe hemp programs.
- (d) **“Commercial sales”** means the sale of a 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 consumption.
- (f) **“Culpable mental state greater than negligence”** means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.
- (g) **“Cultivate”** means to plant, water, grow, or harvest a plant or crop.
- (h) **“Department”** means the Yurok Department of Agriculture.
- (i) **“Director”** means the Director of Yurok Agriculture and Production programs.

- (j) **“GPS”** means Global Positioning System.
- (k) **“Handle”** means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. “Handle” also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- (l) **“Harvest lot”** means a quantity of hemp, of the same variety, harvested in a distinct time frame that is: (1) cultivated in one contiguous production area within a production site; or (2) cultivated in a portion or portions of one contiguous production area within a Production Site. Harvest lot does not include a quantity of hemp comprised of hemp produced in noncontiguous production areas.
- (m) **“Harvest lot identifier”** means a unique identifier assigned by the local Farm Service Agency (“FSA”) office used by the Yurok Tribe 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”** means a person licensed by the Yurok Tribe to cultivate hemp within the territories of the Tribe in accordance with the provisions of this chapter.
- (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 plan”** means the USDA-approved Yurok Tribal Hemp Plan for domestic production of hemp within the territories of the Yurok Tribe. The program includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, licensing requirements, and ensuring compliance with the 2018 Farm Bill, federal regulations and Yurok laws, ordinances, policies, and procedures.
- (s) **“Hemp producer”** means a person licensed by the Yurok Tribe to cultivate hemp within the territories of the Tribe in accordance with the provisions of this ordinance.
- (t) **“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. 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.
- (u) **“Industrial hemp”** has the same meaning as “hemp” as that term is defined in this section, above.
- (v) **“Key participant”** means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. The definition of key participant excludes a member of Yurok Tribe leadership who is acting in their official capacity as a Tribal leader, except when that member exercises executive managerial control over hemp production outside of their role on Council.
- (w) **“Laboratory”** means laboratories allowable for use in hemp testing activities which use appropriate, validated methods and procedures for all testing activities, and which also evaluate measurement of uncertainty, meet the Association of Official Agricultural Chemists (“AOAC”) International standard method performance requirements for

selecting an appropriate method, and are consistent with the Department’s policies. Laboratories must also be registered with the Drug Enforcement Agency (“DEA”) to conduct chemical analysis of controlled substances, or as required by federal regulations at 7 C.F.R.990.(a)(3)(iii).

- (x) **“Licensee”** has the same meaning as “hemp producer” as that term is defined in this section, above.
- (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”** is defined as a failure to exercise the level of care that a reasonably prudent person would exercise in complying with this ordinance and all related ordinances, policies, and procedures including the federal regulations on industrial hemp.
- (aa) **“Non-commercial personal possession or use”** means possession and use of hemp without the intent to transfer by anyone in the household, but does not include sale, trade, or any other type of commercial use.
- (bb) **“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 a Tribal, entity.
- (cc) **“Process”** means to convert any portion of a hemp crop into a hemp ingredient, hemp product, or other marketable form.
- (dd) **“Production site”** has the same meaning as “registered land area” as that term is defined in this section, below.
- (ee) **“Reasonable efforts”** means to find the 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 using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produced plants that exceed the acceptable hemp THC level, and the plant does not have a THC concentration of more than 1.0 percent on a dry weight basis.
- (ff) **“Registered land area”** means a contiguous lot, parcel, or tract of land registered with the Yurok Tribe on which a licensee may cultivate hemp. A registered land area may include land and buildings that are not used to cultivate hemp.
- (gg) **“THC”** means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post-decarboxylation or other similarly reliable method allowed under the USDA hemp regulations at 7 CFR Part 990, *et seq.* from time to time.
- (hh) **“USDA”** means the United States Department of Agriculture.
- (ii) **“Variety”** means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

Commented [HC2]: If another method is desired, it needs to be in the plan submitted to USDA. There are two methods commonly used by the industry today; this is one.

CHAPTER 1. POLICIES AND PROCEDURES

SECTION 220011. Policies and procedures set by the Department

This ordinance creates the Yurok Department of Agriculture. The Department shall set the policies and procedures for all hemp production.

- (a) Tribal Council hereby delegates to the Department the authority to modify, adapt, or amend their policies and procedures as necessary, to keep them in line with best practices and procedures, and update the Hemp Plan filed with the USDA as appropriate to remain compliant with federal regulations.
- (b) All modifications, adoptions, or amendments by the Department of policies and procedures must be approved by Tribal Council through resolution.
- (c) The Department shall produce and maintain the following forms:
 - (1) “Producer License Application Packet”
 - (2) “Field Planting Report”
 - (3) “Greenhouse/Indoor Planting Report”
 - (4) “Harvest/Destruction Report”
 - (5) “Producer Production Report Form”
 - (6) “Process/Handler Production Report and Annual License Renewal”
 - (7) “Site Modification Request Form”
 - (8) “Domestic Seed/Propagule Request Requirements”
 - (9) “International Seed Request Requirements”
 - (10) “Processor/Handler License Application”
- (d) The Department shall set administrative procedures for and may impose damages, fines, and fees for violations of this ordinance.
- (e) The Department shall maintain laboratory testing policies that are consistent with federal and Tribal requirements and best practices.
- (f) The Department shall set and maintain a fee schedule for all applicable fees, including but not limited to, license application fees, testing fees, modification fees, and all other appropriate fees.

SECTION 22101. Recordkeeping and reporting

- (a) The Department shall retain for a period of at least three (3) calendar years, all information required to be collected by this ordinance, for every registered land area approved by the Department.
- (b) Within such period of time set forth in the USDA hemp regulations at 7 CFR Part 990, *et seq.* as amended from time to time, the Yurok Tribe shall submit to the USDA the following information for each hemp producer within the territories of the Tribe in a format that is compatible with USDA’s information sharing system:
 - (1) Contact information for each hemp producer, including the legal entity name and EIN, full name of all authorized representatives, the street address of each registered land area, or other identifier such as an APN, the business telephone number, and email address of each licensee (to the extent available); and
 - (2) A legal description of the registered land area; and
 - (3) The status of a license or other required authorization from the Department.
 - (4) Report of any non-conforming plants or material that required remediation or destruction, including the name and license number of the producer, location and total acreage of the source production area, date of remediation or disposal

completion.

- (c) The Tribe will report to the USDA in a format that is compatible with USDA's information sharing system for each tribal producer what was included in the previous report and whose reported information has changed. The report shall include the previously reported information and the new information.
- (d) The Department will fulfill information sharing obligations under the USDA hemp regulations, including requiring tribal producers to designate their land and report their hemp crop acreage to the USDA Farm Service Agency per 7 CFR Part 990.7, including:
 - (1) Street address and to the extent practicable geospatial location for each lot/greenhouse where tribal producer will grow hemp; and
 - (2) Total hemp acreage/greenhouse indoor square footage; and
 - (3) Tribal hemp license number.
- (e) The Department shall assign each tribal producer with a license identifier in format compliant as prescribed by USDA.
- (f) The Department shall submit producer information regarding total acreage of hemp planted, harvested, disposed of and remediated in an annual report to the USDA by December 15h of each year in a format compatible with the USDA's information sharing system.
- (g) The Department shall then collect this info and report to Agricultural Marketing Service ("AMS") and to the administration of the Seed Regulatory & Testing Division ("S&T").

SECTION 22102. Licensee recordkeeping and reporting

- (a) Hemp producers must report any changes of contact information to the Department in writing within fourteen (14) calendar days of the change.
- (b) Hemp producers who are entities must report any change in control, change in business structure, sale of business, or change in control.
- (c) Licenses are non-transferrable.
- (d) Hemp producers must report to their local FSA office and identify the designated harvest lot using the Yurok harvest identifier format included in the policies and procedures for the Department.
 - (1) A designated harvest lot is an area of land that the hemp producers designate themselves in which the hemp producer produces a quantity of hemp, of the same variety, harvested in a distinct time frame that is: (1) cultivated in one contiguous production area within a production site; or (2) cultivated in a portion or portions of one contiguous production area within a production site. "Harvest lot" does not include a quantity of hemp comprised of hemp produced in noncontiguous production areas.
 - (2) Planting Report. Within fourteen (14) calendar days after planting any industrial hemp, each hemp producer shall submit a planting report to the Department that includes the GPS coordinates and a map showing the location and actual acreage or square feet of hemp planted.
 - (3) Pre-Harvest Notification. At least fourteen (14) calendar days prior to harvest, each hemp producer shall submit a pre-harvest notification to the Department, on a form provided by the Department that includes the projected harvest date(s) and location(s) of each variety of hemp cultivated within a registered land area. A hemp

Commented [HC3]: Consider including that hemp producers will submit the FSA form 578 to the Tribe's Department of Agriculture so that the Tribe can verify reporting.

Commented [HC4R3]: https://forms.sc.egov.usda.gov/eForms/instruction?FileType=RevisionInstruction&FileName=FSA0578MANUALegov_08-22-19V01.pdf

producer must notify the Department immediately of any changes in the reported harvest dates in excess of seven (7) calendar days.

- (4) Post-Harvest Report. Within fourteen (14) calendar days post-harvest, each hemp producer shall submit a post-harvest report to the Department, on a form provided by the Department that includes the actual harvest date(s) and location(s) of each variety of hemp harvested within a registered land area. A hemp producer 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 the registered land area and are not transferred or sold.
 - i. Within 14 calendar days, each hemp producer shall report to the Department any destruction or remediation completed, including the harvest lot(s) and method(s) of destruction or remediation.
- (5) Each hemp producer shall ensure that the laboratory that conducts the test samples shall report those test results to the USDA and the Department. The Department will not authorize production without confirming producer has identified a qualified lab.

SECTION 22103. Each hemp producer must retain all documentation of sampling and testing for at least three (3) calendar years in a manner such that it can be readily provided to the Department upon request. Procedure for inspecting, sampling, and testing

- (a) The Department shall conduct regular inspections of hemp producers to ensure compliance with this ordinance, applicable federal regulations, and required THC concentration.
 - (1) Inspections will be at least annually, they may be randomly selected, and they may be performed without notice. The Department will inspect at least ten percent of producers each year, using a randomizer tool to identify which producer(s) will be inspected,
 - (2) Inspectors shall be certified pursuant to the USDA and Yurok laws and regulations. Inspections will review records of producers against physical conditions of the production facility, and ensure that all areas are held to a standard of cleanliness sufficient to maintain contamination free production and processing of hemp. Sampling of plant material may or may not occur during an inspection, depending on observed physical conditions.
 - (3) During inspections, inspection representative(s) must be provided with 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 tribal producer license.
 - (4) All licensees shall grant the Department unrestricted access to the registered land area(s) and accompanying facilities, any piece of land, building, greenhouse, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.
 - (5) Hemp plant materials from one lot cannot be commingled with hemp plant material from other lots.

Commented [HC6R5]: Moving to below, in sample section

- (6) All samples collected by the Department shall become the property of the Department and no compensation shall be owed by the Department for such samples.
- (b) A hemp producer must arrange for and ensure the sampling of each harvest lot by a sampling agent trained as per 7 CFR Part 900, et seq.
- (1) Sampling agents shall be trained pursuant to the USDA or Yurok laws and regulations. The Tribe must maintain information about sampling agents and make such information available to producers.
 - (2) During sampling, sampling representative(s) must be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and any buildings or other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants.
 - (3) Sampling must occur no more than thirty (30) calendar days prior to harvest, or within such other period of time set forth in the USDA hemp regulations at 7 CFR Part 990, et seq. from time to time, for the purpose of ensuring that the harvest lot does not exceed permissible THC concentration on a dry weight basis. If the producer fails to complete harvest within thirty (30) days of sample collection, or within such other period of time set forth in the USDA hemp regulations at 7 CFR Part 990, et seq. as amended from time to time, the hemp producer shall be required to submit a secondary pre-harvested sample of the lot for testing.
 - (4) During a scheduled sample collection, the Tribal producer or an authorized representative of the Tribal producer must be present at the growing site.
 - (5) (4) Samples of full plants from within each lot should be selected for homogeneous representation, such that a sufficient at confidence level of 95% that no more than 1% of the plants would exceed the acceptable hemp THC level. The number of samples taken is based on the lot's size and should be no less than 1 plant per lot and per acre, whichever is smaller.
- (c) A hemp producer shall not harvest the cannabis crop prior to samples being taken. A hemp producer may remove a harvest lot from a registered land area prior to receiving test results as set out in this section, so long as the required sample has been submitted and the harvest lot does not enter the stream of commerce until test results have been received.
- (d) Compliance and safety testing for hemp and hemp products required by these rules shall be conducted by federally designated or 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 Department because the laboratory uses appropriate, validated methods and procedures for all testing activities and who also evaluate measurement of uncertainty as controlled by the USDA federal regulations.
- (e) A hemp producer must have an approved Yurok sampling agent pursuant to USDA regulations and Yurok laws and regulations who will collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing. A hemp producer may not act as a sampling agent of his own lots.
- (f) For each sample tested pursuant to this section, the hemp producer shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:

Commented [HC7]: consider if hemp producers or testers can also act as sampling agents or inspectors for OTHER producers.

Commented [HC8]: Policy decision: growers submit analysis to YT Department?

Commented [HC9R8]: not needed

- (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 independent testing laboratory; and
- (2) The Department shall collect labs procedures for testing and analysis, and review them for acceptability and suitability, and to verify the procedure for testing was able to accurately identify whether the sample contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level.
- (3) The procedure shall include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods with AMS and S&T or as otherwise permitted under the USDA hemp regulations at 7 CFR Part 990, *et seq.* as amended from time to time.
- (4) 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 it shall abide by such other testing requirements permitted under the USDA hemp regulations at 7 CFR Part 990, *et seq.* as amended from time to time.
- (5) The testing methodologies meeting the requirements of this paragraph (f)(4) include gas or liquid chromatography with detection. 8 Any other proposed testing method must 7 C.F.R. Part 990, *et seq.* and must be submitted and approved by the Department and USDA prior to use.
 - (A) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.
 - (B) Lots tested and not certified by a laboratory consistent with the Departments policies, as amended from time to time, at or below the acceptable hemp THC level may not be further handled, processed, or entered into the stream of commerce, and the producer shall ensure the lot is remediated or disposed of in accordance with 7 CFR Part 990.27 of the USDA federal regulations, and the Yurok Laws, regulations, and policies and procedures.
- (6) The testing procedures shall determine the total the THC concentration on a dry weight basis.
- (7) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:
 - (A) Laboratory quality assurance must ensure the validity and reliability of test results;
 - (B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
 - (C) The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - (D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and
 - (E) An effective remediation or disposal procedure for hemp plants that are

produced that do not meet the requirements of this part.

- (i) Remediation is allowed when feasible to create a homogeneous "biomass" that must be retested for THC compliance.
 - (ii) Disposal must be in accordance with DEA reverse distributor regulations found at 21 CFR 1317.15 or disposed of at the production site through compost or otherwise rendering the plant material unrecognizable, and adhere to Yurok laws, regulations, and policies and procedures.
 - (iii) Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.
- (g) The Department shall report in a format that is compatible with USDA's information sharing system by the first of the month any occurrence of cannabis plants or plant material that exceed the acceptable hemp THC level, and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.
- (1) The measurement of uncertainty will be included as part of any hemp test results; and
 - (2) The date the hemp was sampled, the date testing was performed, and methodology used to analyze the sample; and
 - (3) The THC concentration contained in the test sample; and
 - (4) A statement indicating whether the sample contained a THC concentration of not more than the acceptable hemp THC level.
 - (5) The Yurok Hemp plan relies on the same standard as the USDA definition of "acceptable hemp THC level" to account for the uncertainty in the test results.
- (h) One sample per lot of hemp shall be collected pursuant to USDA sampling guidelines for hemp growing facilities.
- (i) The method used for sampling from the flower material must ensure that samples are obtained from the flowering tops of plants when flowering tops are present, and that those samples are approximately five to eight inches in length from the "main stem" (including leaves and flowers), "terminal bud" (occurring at the end of the stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant
- (i) A hemp producer may apply to the Department for retesting and/or resampling of any non-compliant harvest lot, which may be approved or denied at the Department's discretion.
- (j) Nothing in this section shall prevent a hemp producer from voluntarily collecting samples and testing hemp for quality assurance and research and development purposes.

SECTION 22104. Procedure for remediation or disposal

- (a) Hemp that tests higher than the acceptable hemp THC level shall be remediated or disposed of by the hemp producer in compliance with Department policy and all applicable tribal and federal laws, regulations, rules, and other requirements.
- (b) The disposal methods shall be compliant with applicable federal requirements. The Department shall maintain disposal policies that are current with all federal and tribal

Commented [HC10]: <https://www.ams.usda.gov/rules-regulations/hemp/rulemaking-documents>

Policy decision on what option(s) to include for remediation, and for disposal.

(copy / paste from USDA the applicable pieces)

Commented [HC11]: <https://www.ams.usda.gov/rules-regulations/hemp/rulemaking-documents>

Policy decision on what option(s) to include for remediation, and for disposal.

(copy / paste from USDA the applicable pieces)

requirements.

- (c) If a hemp producer has produced cannabis exceeding the acceptable hemp THC level, the material may be remediated or may be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under the CSA. Upon notification that a lot has tested above the acceptable hemp THC level, the licensee shall notify the Department of their decision to remediate or dispose of the non-compliant lot, and the remediation or disposal method to be used.
- (1) If the THC content of the material collected for destruction exceeds the negligent threshold specified in Section 22401(d), then the destruction must be overseen by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Yurok Tribal Police enforcement officer.
 - (2) If the THC content is greater than 0.3% but less than acceptable hemp THC level, growers may remediate or dispose of the crop pursuant to Department procedures.
 - (i) Remediation can be accomplished by combining noncompliant materials with stems, leaves or other zero THC hemp material from the same harvest lot resulting in a homogeneous “biomass” that is under the acceptable hemp THC level, verified by re-testing the lot.
 1. If the licensee chooses to remediate the non-compliant lot, the licensee should select either to separate and remove all flowers from stalks, leaves and seeds of the lot or to shred the entire lot into “biomass.”
 - a. Separation and removal of the flowers from stalks, leaves and seeds. The flowers, including buds, trichomes, “trim,” and “kief,” should be removed from the lot and destroyed. As part of a State or Tribal plan, State and Tribes should include acceptable methods for the removal of non-compliant flowers and floral material under this remediation strategy. Methods may include, but are not limited to, the removal, by hand, of non-compliant flowers and floral materials and the mechanical removal of non-compliant flowers and floral materials.
 - b. Until such time as the non-compliant flowers and floral material are disposed of, the stalks, leaves, and seeds should be separated from the non-compliant floral material and clearly labeled and demarcated as “hemp for remediation purposes.”
 - c. Seeds removed from non-compliant hemp during remediation should not be used for propagative purposes.
 2. Creation of Biomass. The entire lot, as reported to the FSA, should be shredded to create a homogenous, uniform biomass. As part of a State or Tribal plan, State and Tribes shall include acceptable methods for the creation of biomass under this remediation strategy. Methods may include, but are not limited to, the shredding of hemp plants through shredders, composters, or specialty mechanical equipment.
 - a. The biomass created through this process shall be resampled and retested to ensure compliance before entering the stream of commerce in accordance with §990.3(a)(6) and §990.27(c). Biomass that fails the retesting is non-compliant hemp and shall be destroyed.
 - b. Remediated biomass should be separated from any compliant hemp stored in the area and clearly labeled and demarcated as “hemp for remediation

- c. Remediated biomass should not leave the labeled and demarcated area until a test result showing compliance with the acceptable hemp THC level is received or until the biomass will be destroyed.

1. Remediated biomass shall be resampled and retested to ensure compliance before entering the stream of commerce in accordance with §990.3(a)(6) and §990.27(c). Biomass that fails the retesting shall be destroyed.
2. The resample should be taken by sampling agent as described in the “Sampling Guidelines.”
3. A representative sample of the biomass should be taken for compliance purposes. When taking the resample, the sampling agent should take biomass material from various depths, locations, and containers in the labeled and demarcated area to collect a representative sample of the material. At minimum, ~750 mL or three (3) standard measuring cups of biomass material should be collected. Sampling agents may collect more biomass material based on the requirements of the testing laboratory. If ~750 mL of material is not available, the sampling agent should collect enough biomass material for a representative sample.
4. An original copy of the resample test results, or a legible copy, should be retained by the producer or an authorized representative and available for inspection for a period of three (3) years from the date of receipt.
5. Laboratories testing a resample should utilize the same testing protocols as when testing a standard sample as described in the “Laboratory Testing Guidelines.”

- (d) The Tribe report in a format that is compatible with USDA's information sharing system by the first of the following month any occurrence of cannabis plants or plant material that exceed the acceptable hemp THC level, and it will attach remediation or disposal records of all plants and materials from lot in which defective samples were taken.
- (e) The producer is responsible for the costs of remediation disposal.
- (f) Hemp producers shall have fourteen (14) calendar days from the date of notification of test results for harvest lots that are higher than the acceptable hemp THC level to contact the Department in writing and apply for retesting or propose a method for destruction.
- (g) Hemp subject to destruction pursuant to this section shall not be removed from the registered land area unless otherwise authorized by the Department. Either a Department representative must witness the destruction or remediation, or the hemp producer shall submit timestamped photographs of the destruction or remediation to the Department within 3 days of such action and prior to removal being approved by the Department.
- (h) Lots tested and not certified by a laboratory consistent with the Department's policies, as

amended from time to time, at or below the acceptable hemp THC level may not be further handled, processed, or entered into the stream of commerce and the producer shall ensure the lot is disposed of.

- (i) The hemp producer shall provide any and all evidence requested by the Department to verify disposal to the satisfaction of the Department.

CHAPTER 2. YUOK TRIBE HEMP PROGRAM

SECTION 22201. Application

(a) Any Person desiring to cultivate or process hemp within the territories of the Tribe must obtain a license from the Yurok Tribe prior to engaging in such activity. Persons seeking to cultivate hemp shall provide to the Department:

- (1) The legal description and/or geospatial location sufficient for locating the registered land area and each field, greenhouse, or structure where the person cultivates hemp, or intends to cultivate hemp; and
- (2) Contact information for each individual hemp producer, including full name of all authorized representatives, the street address of each registered land area, the business telephone number, and email address of each licensee; and
- (3) Contact information for each entity hemp producer, including EIN, full name of all authorized representatives, the street address of each registered land area, the business telephone number, and email address of each licensee; and
- (4) An application for each individual hemp producer, as information provided will differ slightly. Also, entity applicants should provide an EIN.
- (5) A completed criminal background check report for the applicant, and key participant on a form determined by the Department, and a notarized attestation that applicant does not have any disqualifying felony drug convictions pursuant to this ordinance.

(b) The Tribe shall perform all background checks to support the Yurok Hemp Plan.

- (6) The Department will determine which tribal producer employees will be considered to be participating in the plan and will be subject to the felony restrictions which at a minimum shall include a review of the criminal history reports for each applicant and key participant; and
- (7) When an applicant is a business entity, the Tribe shall review the criminal history report for each key participant in the business.
- (8) Any person found by the Tribe to have materially falsified any information submitted to this program will be ineligible to participate.

(c) Ineligible Applicants.

- (1) A hemp producer that negligently violates a state, Tribal, or USDA plan three times in a five-year calendar period shall be ineligible to produce hemp for a period of five calendar years beginning on the date of the third violation; or
- (2) Any person convicted of a felony relating to a controlled substance under Tribal, state, or federal law in the ten-year calendar period prior to the application date shall be ineligible to produce hemp under the Yurok Tribe Hemp Program; or
- (3) Any person who materially falsifies any information contained in an application

to participate in the program established under this ordinance shall be ineligible to produce hemp under the Yurok Tribe Hemp Program.

- (4) Exception to ineligibility: A person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

CHAPTER 3. PROHIBITED PRODUCTS

SECTION 22301. Products not to be sold to members of the public.

Any hemp product in excess of the acceptable hemp THC level shall not be sold to members of the public or publicly offered for sale.

Industrial hemp processing and production for sale, or cultivation, handling, storage, or transport of all hemp and other cannabis plants is wholly prohibited without an application approved by the Department.

CHAPTER 4. VIOLATIONS AND CORRECTIVE ACTION PLANS

SECTION 22401. Negligent violation

- (a) A hemp producer shall be subject to this section if the Department determines that the hemp producer has negligently violated the requirements of this chapter, including by negligently:
- (1) Failing to provide a legal description of land on which the hemp producer cultivates hemp; and
 - (2) Failing to obtain a license or other required authorization from the Department as applicable; and
 - (3) Failing to reasonably cultivate, handle, store, or transport all hemp and other cannabis plants; and
 - (4) Producing *Cannabis sativa L.* with a THC concentration of more than 1% THC level.
- (b) A hemp producer that negligently violates this ordinance shall not, as a result of that violation, be subject to any criminal enforcement action by the federal government or any state government, tribal government, or local government. A hemp producer shall not receive more than one (1) negligent violation per year.
- (c) A hemp producer that negligently violates this ordinance under section 24401 three (3) times in a five (5)-year calendar period shall be ineligible to produce hemp for a period of five (5) calendar years beginning on the date of the third violation.
- (d) Hemp producers do not commit a negligent violation if they produce plants that exceed the acceptable hemp THC level, using reasonable efforts to grow hemp, and if the plant does not have a THC concentration of more than 1.0 percent 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.* as amended from time to time.
- (1) The Tribe recognizes that hemp producers may take the necessary steps and precautions to produce hemp, such as using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produce plants that exceed the acceptable hemp THC level.
 - (2) The Department can consider other reasonable efforts.
 - (3) Although a producer would not be considered negligent, they would still need to

Commented [HC12]: Policy decision:
Negligent violation is not necessary by USDA until THC is more than 1% THC.

dispose of hemp plants if the THC concentration exceeded the acceptable hemp THC level in accordance with the terms of this ordinance.

SECTION 22402. Negligent violation corrective action plans

- (a) A hemp producer described in this section shall comply with a plan established by the Department to correct the negligent violation, including:
 - (1) A reasonable date by which the hemp producer shall correct the negligent violation; and
 - (2) A requirement that the hemp producer shall periodically report to the Department on the compliance of the hemp producer with this chapter for a period of not less than the next two (2) calendar years from the date of the negligent violation.
- (b) The Department will conduct an inspection to determine if the tribal producer is implementing the corrective action plan.

SECTION 22403. Culpable mental state greater than negligence violations

If the Department determines that a hemp producer in the territories of the Tribe has violated this chapter with a culpable mental state greater than negligence, the Department shall immediately report the hemp producer to:

- (a) The United States Attorney General; and
- (b) Yurok Tribe Public Safety Department.

SECTION 22404. Other violations

In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures set forth in the policies and procedures promulgated by the Department, a person who is found by the Department to have violated this regulation with a culpable mental state greater than negligence shall be subject to the reporting requirements set forth in this ordinance.

CHAPTER 5. MATERIALS INCORPORATED BY REFERENCE

SECTION 22501. Incorporation by reference

The following material, developed by the Department, is incorporated by reference:

- (a) Department of Agriculture Hemp Policies and Procedures; and
- (b) The Tribe certifies that it has the resources and personnel to carry out the practices and procedures of its Tribal Hemp Plan, and that the Tribe will commit adequate resources to effectively administer this ordinance.