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employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to (a) raise, fix, stabilize, or set a floor for raisin, sultana, or currant prices, or (b) limit the quantity or quality of raisins, sultanas, or currants imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

[46 FR 39984, Aug. 6, 1981]

**PART 990—DOMESTIC HEMP
PRODUCTION PROGRAM**

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AUTHORITY: 7 U.S.C. 1639o note, 1639p, 1639q, 1639r.

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Subpart A—Definitions

§ 990.1 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptable hemp THC level. When a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State or Tribal hemp

plans or the USDA hemp plan is when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35 percent and the measurement of uncertainty is ± 0.06 percent, the measured total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent 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 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 CSA.

Act. Agricultural Marketing Act of 1946.

Agricultural Marketing Service or *AMS*. The Agricultural Marketing Service of the U.S. Department of Agriculture.

Applicant. (1) A State or Indian Tribe that has submitted a State or Tribal hemp production plan to USDA for approval under this part; or

(2) A producer in a State or territory of an Indian Tribe that is not subject to a State or Tribal hemp production plan and who has submitted an application to USDA for a license under the USDA hemp production plan under this part.

Audit. An official inspection of an individual's or organization's accounts and paperwork or documentation by an independent body. An audit also refers to a compliance audit of States and Indian Tribes with approved hemp production plans by USDA to determine compliance with their approved plan, the regulations in this part, and the Act. For this part, audit relates to documentation related to authorities under the 2018 Farm Bill to produce hemp.

Cannabis. A genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are

subspecies thereof. *Cannabis* refers to any form of the plant in which the total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

Controlled Substances Act (CSA). The Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*

Conviction. Means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this part, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this part.

Corrective action plan. A plan proposed by a licensed hemp producer and approved by the governing entity for correcting a negligent violation or non-compliance with the applicable State, Tribal, or USDA hemp production plan, its terms, the applicable law(s), and/or this part. Also, a plan proposed by a State or Tribal government for correcting violations or non-compliances with USDA-approved State or Tribal hemp programs.

Criminal history report. The Federal Bureau of Investigation's Identity History Summary.

Culpable mental state greater than negligence. To act intentionally, knowingly, willfully, or recklessly.

Decarboxylated. The completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877 * THCA)).

Decarboxylation. The removal or elimination of carboxyl group from a molecule or organic compound.

Disposal. An activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; burying plant material into the earth and covering with soil.

Delta-9 tetrahydrocannabinol or *THC*. Delta-9 THC is the primary psychoactive component of cannabis. For the purposes of this part, delta-9 THC and THC are interchangeable.

Drug Enforcement Administration or *DEA*. The United States Drug Enforcement Administration.

Dry weight basis. The ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. 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.

Entity. A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

Farm Service Agency or *FSA*. An agency of the United States Department of Agriculture.

Gas chromatography or *GC*. A type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

Geospatial location. A location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

Handle. 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.

Hemp. The plant species *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 total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Immature plants. A cannabis plant that is not flowering.

Indian Tribe or *Tribe*. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Information sharing system. The database that allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

Key participants. A sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. 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. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

Law enforcement agency. Any Federal, State, Tribal, or local law enforcement agency.

Liquid chromatography or *LC*. A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. LC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid absorbent material to separate and analyze compounds.

Lot. A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. The term lot also means the terms “farm,” “tract,” “field,” and

“subfield” as these are terms used by FSA in 7 CFR 718.2 to define lot.

Marijuana. Or “marihuana”, as defined in the CSA, means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term “marihuana” does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). “Marihuana” means all cannabis that tests as having a THC concentration level of higher than 0.3 percent on a dry weight basis.

Measurement of Uncertainty (MU). 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.

Negligence. Failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

Phytocannabinoid. Cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

Plan. A set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp.

Post-decarboxylation. In the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a

chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample. See the definition for decarboxylation.

Produce. To grow hemp plants for market, or for cultivation for market, in the United States.

Producer. A producer as defined in 7 CFR 718.2 specifically of hemp.

Remediation. Remediation refers to the process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

Reverse distributor. A person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

Secretary. The Secretary of Agriculture of the United States Department of Agriculture.

State. Any one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

State department of agriculture. The agency, commission, or department of a State government responsible for agriculture in the State.

Territory of the Indian Tribe. (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and

whether within or without the limits of a State;

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and

(4) Any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

Total THC. Total THC is the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample.

Tribal government. The governing body of an Indian Tribe.

USDA licensee. A person, partnership, or corporation licensed under the USDA plan to grow hemp under the terms established in this part and who produces hemp.

[86 FR 5680, Jan. 19, 2021, as amended at 88 FR 82236, Nov. 24, 2023]

Subpart B—State and Tribal Hemp Production Plans

§ 990.2 State and Tribal plans; General authority.

States or Indian Tribes desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian Tribe shall submit to the Secretary for ap-

proval, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian Tribe monitors and regulates that production.

§ 990.3 State and Tribal plans; Plan requirements.

(a) *General requirements.* A State or Tribal plan submitted to the Secretary for approval must include the practice and procedures described in this paragraph (a).

(1) A State or Tribal plan must include a practice to collect, maintain, and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:

(i) Contact information as described in § 990.70(a)(1);

(ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and

(iii) The status and number of the producer's license or authorization in a format prescribed by USDA.

(2) A State or Tribal plan must include a procedure for accurate and effective sampling of hemp that includes the requirements in this paragraph (a)(2).

(i) Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing. Samples must be collected by a sampling agent. Producers may not collect samples from their own growing facilities.

(ii) Samples shall be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.

(iii) The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would

exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section.

(A) The alternative method must be part of the State or Tribe's hemp plan and is subject to USDA approval.

(B) The alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level. The alternative method may consider one or more of the following factors:

(1) Seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe;

(2) Whether the producer is conducting research on hemp;

(3) Whether a producer has consistently produced compliant hemp plants over an extended period of time; and

(4) Factors similar to those in this paragraph (a)(2)(iii)(B).

(iv) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site if possible.

(v) Sampling agents shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(vi) A producer shall not harvest the cannabis crop prior to samples being taken.

(vii) Sampling agents must be trained using USDA, State, or Tribal training procedures. States and Indian Tribes must maintain information, available to producers, about trained sampling agents.

(3) A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the

sample contains a total delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses post-decarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must report the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (a)(3) include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

(i) 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 and shall be disposed of or remediated in accordance with § 990.27.

(ii) Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

(iii) Laboratories conducting analytical testing for purposes of detecting the concentration levels of Total THC shall meet the following requirements:

(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) Effective disposal procedures for non-compliant samples that do not meet the requirements of this part.

(F) 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) Sample preparation of pre- or post-harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by USDA.

(H) After December 31, 2022, States and Indian Tribes shall require that only laboratories registered with the DEA may conduct testing under this section.

(4) A State or Indian Tribe shall require testing laboratories to comply with USDA reporting requirements in subpart F of this part. Laboratories shall only submit test results used to determine compliance with this part. Test results from informal testing conducted throughout the growing season shall not be reported to USDA.

(5) A State or Tribal plan must include a procedure to comply with the enforcement procedures in § 990.6.

(6) A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.

(i) The disposal must be conducted either by using a DEA-registered reverse distributor or law enforcement; or on site at the farm or hemp production facility.

(ii) The State or Tribal plan must include procedures to verify the disposal or remediation of the cannabis plant. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Disposal and remediation means are described at AMS's website.

(iii) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

(7) A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum, a random group of producers to verify that hemp is not produced in violation of this part.

(8) A State or Tribal plan must include a procedure for submitting the report described in § 990.70 to the Secretary by the first of each month. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.

(9) The State or Tribal government must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (9) of this section.

(10) The State or Tribal plan must include a procedure to collect and share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d). The State or Tribal government is responsible for reporting the information identified in paragraphs (a)(10)(i) through (iii) of this section with AMS. The State or Tribal hemp production plan must include the following:

(i) A requirement that producers report their hemp crop acreage to the FSA, consistent with the requirement in § 990.7.

(ii) Assignment of a license or authorization identifier for each producer in a format prescribed by USDA.

(iii) A requirement that producers report the total acreage of hemp planted, harvested, and, if applicable, disposed or remediated. The State or Tribal government shall collect this information and report it to AMS.

(b) *Relation to State and Tribal law.* A State or Tribal plan may include any other practice or procedure established by a State or Indian Tribe, as applicable; *Provided*, That the practice or procedure is consistent with this part and Subtitle G of the Act.

(1) *No preemption.* Nothing in this part preempts or limits any law of a State or Indian Tribe that:

(i) Regulates the production of hemp; and

(ii) Is more stringent than this part or Subtitle G of the Act.

(2) *References in plans.* A State or Tribal plan may include a reference to a law of the State or Indian Tribe regulating the production of hemp, to the

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extent that the law is consistent with this part.

[86 FR 5680, Jan. 19, 2021, as amended at 88 FR 82236, Nov. 24, 2023]

§ 990.4 USDA approval of State and Tribal plans.

(a) *General authority.* No later than 60 calendar days after the receipt of a State or Tribal plan for a State or Tribal territory in which production of hemp is legal, the Secretary shall:

(1) Approve the State or Tribal plan only if the State or Tribal plan complies with this part; or

(2) Disapprove the State or Tribal plan if the plan does not comply with this part. USDA shall provide the State or Tribe with written notification of the disapproval and the cause for the disapproval.

(b) *Amended plans.* A State or Tribal government, as applicable, must submit to the Secretary an amended plan if:

(1) The Secretary disapproves a State or Tribal plan and the State or Indian Tribe wishes to have primary regulatory authority over hemp production within its State or territory of the Indian Tribe; or

(2) The State or Indian Tribe makes substantive revisions to its plan or its laws which alter the way the plan meets the requirements of this part. If this occurs, the State or Tribal government must re-submit the revised plan for USDA approval. Such re-submissions should be provided to USDA within 60 days from the date that the State or Tribal laws and regulations are effective. Producers shall continue to comply with the requirements of the existing plan while such modifications are under consideration by USDA. If State or Tribal government laws or regulations in effect under the USDA-approved plan change but the State or Tribal government does not submit a revised plan within 60 days from the effective date of the new law or regulation, the existing plan is revoked.

(3) USDA approval of State or Tribal government plan shall remain in effect unless an amended plan must be submitted to USDA because of a substantive revision to a State's or Tribe's plan, a relevant change in State or

Tribal laws or regulations, or approval of the plan is revoked by USDA.

(4) Upon USDA approval of a Tribal plan, an Indian Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority.

(c) *Technical assistance.* The Secretary may provide technical assistance to help a State or Indian Tribe develop or amend a plan. This may include the review of draft plans or other informal consultation as necessary.

(d) *Approved State or Tribal plans.* If the Secretary approves a State or Tribal plan, the Secretary shall notify the State or Indian Tribe by letter or email.

(1) In addition to the approval letter, the State or Indian Tribe shall receive their plan approval certificate either as an attachment or via website link.

(2) The USDA shall post information regarding approved plans on its website.

(3) USDA approval of State or Tribal government plans shall remain in effect unless:

(i) The State or Tribal government's laws and regulations in effect under the USDA-approved plan change, thus requiring such plan to be revised and re-submitted for USDA approval.

(ii) A State or Tribal plan must be amended in order to comply with future amendments to Subtitle G the Act and this part.

(e) *Producer rights upon revocation of State or Tribal plan.* If USDA revokes approval of a State or Tribal plan due to noncompliance as defined in paragraph (b)(2) of this section and § 990.5, producers licensed or authorized to produce hemp under the revoked State or Tribal plan may continue to produce for the remainder of the calendar year in which the revocation became effective. Producers operating in a State or Tribal territory with a revoked plan would have to apply to USDA for a license to continue producing.

§ 990.5 Audit of State or Tribal plan compliance.

The Secretary may conduct an audit to determine a State or Indian Tribe's compliance with their approved plan.

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(a) *Frequency of audits.* Compliance audits may be scheduled, no more frequently than every three years, based on available resources. Audits may include an onsite-visit, a desk-audit, or both. The USDA may adjust the frequency of audits if deemed appropriate based on program performance, compliance issues, or other relevant factors identified and provided to the State or Tribal governments by USDA.

(b) *Scope of audit review.* The audit may include, but is not limited to, a review of the following:

(1) The resources and personnel employed to administer and oversee its approved plan;

(2) The process for licensing and systematic compliance review of hemp producers;

(3) Sampling methods and laboratory testing requirements and components;

(4) Disposal and/or remediation of non-compliant hemp plants or hemp plant material practices, to ensure that correct reporting to the USDA has occurred;

(5) Results of and methodology used for the annual inspections of producers; and

(6) Information collection procedures and information accuracy (*i.e.*, geospatial location, contact information reported to the USDA, legal description of land).

(c) *Audit reports.* (1) Audit reports will be issued to the State or Tribal government no later than 60 days after the audit concludes. If the audit reveals that the State or Tribal government is not in compliance with its USDA approved plan, USDA will advise the State or Indian Tribe of non-compliances and the corrective measures that must be completed to come into compliance with the Act and regulations in this part. The USDA will require the State or Indian Tribe to develop a corrective action plan, which must be reviewed and approved by the USDA. The corrective action plan must include a reasonable date by which the State or Indian Tribe will correct make corrections. USDA will approve or deny the corrective action plan within 60 days of its receipt. USDA will conduct a second audit to determine if the State or Indian Tribe is in compliance with the

corrective action plan and has corrected the non-compliances.

(2) If the USDA determines that the State or Indian Tribe is not in compliance after the second audit, the USDA may revoke its approval of the State or Tribal plan for one year or until the State or Indian Tribe becomes compliant whichever occurs later. USDA will not approve a State or Indian Tribe's plan until the State or Indian Tribe demonstrates upon inspection that it is in compliance with all regulations in this part.

§ 990.6 Violations of State and Tribal plans.

(a) *Producer violations.* Producer violations of USDA-approved State and Tribal hemp production plans shall be subject to enforcement in accordance with the terms of this section.

(b) *Negligent violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this part. Producers shall not receive more than one negligent violation per growing season. Negligent violations shall include:

(1) Failure to provide a legal description of land on which the producer produces hemp;

(2) Failure to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(3) Production of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

(c) *Corrective action for negligent violations.* Each USDA-approved State or Tribal plan shall provide for the correction of negligent violations. Each corrective action plan shall include, at a minimum, the following terms:

(1) A reasonable date by which the producer shall correct the negligent violation.

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(2) A requirement that the producer periodically report to the State department of agriculture or Tribal government, as applicable, on its compliance with the State or Tribal plan and corrective action plan for a period of not less than the next 2 years from the date of the negligent violation.

(3) A producer that negligently violates a State or Tribal plan approved under this part shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal, or local government.

(4) A producer that negligently violates a State or Tribal plan three times during a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(5) The State or Indian Tribe shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

(d) *Culpable violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to producer violations made with a culpable mental state greater than negligence, including that:

(1) If the State or Tribal government determines that a producer has violated the plan with a culpable mental state greater than negligence, the State or Tribal government, as applicable, shall immediately report the producer to:

- (i) The U.S. Attorney General; and
- (ii) The chief law enforcement officer of the State or Indian Tribe, as applicable.

(2) Paragraphs (b) and (c) of this section shall not apply to culpable violations.

(e) *Felonies.* Each USDA-approved State or Tribal plan shall contain provisions relating to felonies. Such provisions shall state that:

(1) A person with a State or Federal felony conviction relating to a controlled substance may not participate in the plan and may not produce hemp under the State or Tribal plan for 10 years from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018,

and whose conviction also occurred before that date.

(2) The State or Tribal plan shall define who is participating in the plan or program and is subject to the felony conviction restriction for purposes of paragraph (e)(1) of this section. To determine whether a person is subject to the felony conviction restriction, the State or Tribe must obtain a criminal history report for that person. The State or Indian Tribe may require additional reports or checks as it deems necessary.

(3) For each license or authorization that the State or Indian Tribe issues, its plan must identify at least one individual as participating in the plan and for whom it will obtain a criminal history report to determine eligibility under paragraph (e)(1) of this section.

(f) *False statement.* Each USDA-approved State or Tribal plan shall state that any person who materially falsifies any information contained in an application to participate in such program shall be ineligible to participate in that program.

(g) *Appeals.* For States and Indian Tribes who wish to appeal an adverse action, subpart D of this part will apply.

§ 990.7 Establishing records with USDA Farm Service Agency.

All producers licensed to produce hemp under an USDA-approved State or Tribal plan shall report hemp crop acreage to FSA and shall provide, at minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, or is producing under multiple licenses, production information shall be provided for each location.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) License or authorization identifier in a format prescribed by USDA.

§ 990.8 Production under Federal law.

Nothing in this subpart prohibits the production of hemp in a State or the territory of an Indian Tribe for which a

State or Tribal plan is not approved under this subpart if produced in accordance with subpart C of this part, and if the production of hemp is not otherwise prohibited by the State or Indian Tribe.

Subpart C—USDA Hemp Production Plan

§ 990.20 USDA requirements for the production of hemp.

(a) *General hemp production requirements.* The production of hemp in a State or territory of an Indian Tribe where there is no USDA approved State or Tribal plan must be conducted in accordance with this subpart, provided that the production of hemp is not prohibited by the State or territory of an Indian Tribe where production will occur.

(b) *Convicted felon ban.* A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in and producing hemp under the USDA plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

(c) *Falsifying material information on application.* Any person who materially falsifies any information contained in an application for a license under the USDA plan shall be ineligible to participate in the USDA plan.

§ 990.21 USDA hemp producer license.

(a) *General application requirements—*
(1) *Requirements and license application.* Any person producing or intending to produce hemp must have a valid license prior to producing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

(2) *Application dates.* Applicants may submit an application for a license at any time.

(3) *Required information on application.* The applicant shall provide the information requested on the application form, including:

(i) *Contact information.* Full name, residential address, telephone number,

and email address. If the applicant is a business entity, the full name of the business, the principal business location address, full name and title of the key participants, title, email address (if available), and employer identification number (EIN) of the business; and

(ii) *Criminal history report.* A current criminal history report for an individual, or if the applicant is a business entity, all key participants, dated within 60 days of the application submission date. A license application will not be considered complete without all required criminal history reports.

(4) *Submission of completed application forms.* Completed application forms shall be submitted to USDA.

(5) *Incomplete application procedures.* Applications missing required information shall be returned to the applicant as incomplete. The applicant may resubmit a completed application.

(6) *License expiration.* USDA-issued hemp producer licenses shall be valid until December 31 of the year three years after the year in which license was issued.

(b) *License renewals.* USDA hemp producer licenses must be renewed prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria as provided in this subpart for initial applications unless there has been an amendment to the regulations in this part or the law since approval of the initial or last application.

(c) *License modification.* A license modification is required if there is any change to the information submitted in the application including, but not limited to, sale of a business, the production of hemp in a new location, or a change in the key participants under a license.

(d) *Licensing for research.* (1) Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research and does not enter the stream of commerce is not subject to the sampling requirements in §§ 990.24 and 990.26; provided that the producer adopts and carries out a USDA approved alternative sampling method that has the potential to ensure, at a confidence level of

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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.

(2) USDA licensees shall ensure the disposal of all non-compliant plants in accordance with § 990.27. Only research institutions registered with DEA to handle marijuana can keep hemp that tests over the 0.3 acceptable hemp THC level until the end of the study.

(3) USDA licensees shall comply with the reporting requirements in § 990.71 including reporting disposal of non-compliant plants.

§ 990.22 USDA hemp producer license approval.

(a) A license shall not be issued unless:

(1) The application submitted for USDA review and approval is complete and accurate.

(2) The criminal history report(s) submitted with the license application confirms that all key participants to be covered by the license have not been convicted of a felony, under State or Federal law, relating to a controlled substance within the past ten (10) years unless the exception in § 990.20(b) applies.

(3) The applicant, if the applicant was previously or is currently licensed, submitted all reports required as a participant in the hemp production program by this part.

(4) The application contains no materially false statements or misrepresentations and the applicant has not previously submitted an application with any materially false statements or misrepresentations.

(5) The applicant's license is not currently suspended, if the applicant is currently licensed.

(6) The applicant is not applying for a license as a stand-in for someone whose license has been suspended, revoked, or is otherwise ineligible to participate.

(7) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not have a USDA-approved plan or has not submitted a plan to USDA for approval and is awaiting USDA's decision.

(8) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not prohibit the production of hemp.

(b) USDA shall provide written notification to applicants whether the application has been approved or denied. USDA shall provide written notification to applicants in a State or territory of an Indian Tribe that has submitted a plan to USDA and is awaiting USDA approval that their application is being returned.

(1) If an application is approved, a license will be issued.

(2) Licenses will be valid until December 31 of the year three after the year in which the license was issued.

(3) Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.

(4) If a license application is denied, the notification from USDA will explain the reason for denial. Applicants may appeal the denial in accordance with subpart D of this part.

(c) If the applicant is producing in more than one State or territory of an Indian Tribe, the applicant may have more than one license to grow hemp. If the applicant has operations in a location covered under a State or Tribal plan, that operation must be licensed under the State or Tribal plan, not the USDA plan.

§ 990.23 Reporting hemp crop acreage with USDA Farm Service Agency.

All USDA licensees shall report hemp crop acreage to FSA within 30 days of hemp been planted and shall provide, at a minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location of the lot, greenhouse, building, or site where hemp will be produced. All locations where hemp is produced must be reported to FSA.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) The hemp license number.

§ 990.24 Responsibility of a USDA licensee prior to harvest.

USDA licensees must:

(a) No more than 30 days prior to the anticipated harvest of cannabis plants, have a sampling agent collect samples from the cannabis plant for total delta-9 tetrahydrocannabinol concentration level testing.

(b) Have samples 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. Sampling guidelines and training requirements for sampling agents are available from USDA. The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

(c) Have an authorized representative of the USDA licensee present at the growing site during a scheduled sample collection, if possible.

(d) Ensure that sampling agents are provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, (whether growing or harvested), all hemp production and storage areas, all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(e) Not harvest the cannabis crop prior to samples being taken.

(f) Use post-harvest samples only for remediated biomass.

§ 990.25 Standards of performance for detecting total delta-9 tetrahydrocannabinol (THC) concentration levels.

Analytical testing for purposes of determining total THC in cannabis plants shall meet the standards in this section.

(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.

(e) Laboratory must have an effective disposal procedure for non-compliant samples that do not meet the requirements of this part.

(f) 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) At a minimum, analytical testing of samples for total THC must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must reflect the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (g) include, but are not limited to, gas or liquid chromatography with detection.

(1) The total THC shall be determined and reported on a dry weight basis. Additionally, 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.

(2) Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.

(3) After December 31, 2022, USDA licensees may only use laboratories registered with the DEA to conduct testing under this section.

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§ 990.26 Responsibility of a USDA producer after laboratory testing is performed.

(a) The producer shall harvest the crop no later than thirty (30) days after the date of sample collection.

(b) If the producer fails to complete harvest within thirty (30) days of sample collection, a second pre-harvest sample of the lot shall be required to be submitted for testing.

(c) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material.

(d) Lots that meet the acceptable hemp THC level may enter the stream of commerce.

(e) Lots that do not meet the acceptable hemp THC level are subject to § 990.27.

(f) Any producer may request additional pre-harvest testing if it is believed that the original total delta-9 tetrahydrocannabinol concentration level test results were in error. Additional testing may be conducted by the laboratory that conducted the initial test, or another laboratory.

§ 990.27 Non-compliant cannabis plants.

(a) Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.*, and producers must either use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants or ensure the disposal of such cannabis plant on site at the farm or hemp production facility.

(b) Producers must notify USDA of their intent to dispose of or remediate non-conforming plants and verify disposal or remediation by submitting required documentation.

(c) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

§ 990.28 Compliance.

(a) *Audits.* USDA licensees may be audited by the USDA. The audit may include a review of records and documentation, and may include site visits to farms, fields, greenhouses, storage

facilities, or other locations affiliated with the producer's hemp operation. The audit may include the current crop year, as well as any previous crop year(s). The audit may be performed remotely or in person.

(b) *Frequency of audit verifications.* Audit verifications may be performed once every three (3) years unless otherwise determined by USDA. If the results of the audit find negligent violations, a corrective action plan may be established.

(c) *Assessment of producer's hemp operations for conformance.* The producer's operational procedures, documentation, recordkeeping, and other practices may be verified during the audit verification. The auditor may also visit the production, cultivation, or storage areas for hemp listed on the producer's license.

(1) *Records and documentation.* The auditor shall assess whether required reports, records, and documentation are properly maintained for accuracy and completeness.

(2) [Reserved]

(d) *Audit reports.* Audit reports will be issued to the producer no later than 60 days after the audit is concluded. If USDA determines through an audit that the producer is not compliant with the Act or this part, USDA shall require a corrective action plan. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. USDA will approve or deny the corrective action plan within 60 days of its receipt. Producers operating under a corrective action plan must also periodically report to USDA on their compliance with the plan for a period of not less than two calendar years following the violation. The producer's implementation of a corrective action plan may be reviewed by USDA during a future site visit or audit. If additional instances of noncompliance occur, USDA may revoke the producer's USDA license for one year or until the producer becomes compliant whichever occurs later.

§ 990.29 Violations.

Violations of this part shall be subject to enforcement in accordance with the terms of this section.

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(a) *Negligent violations.* Hemp producers are not subject to more than one negligent violation per calendar year. A hemp producer shall be subject to enforcement for negligently:

(1) Failing to provide an accurate legal description of land where hemp is produced;

(2) Producing hemp without a license; and

(3) Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (a) if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis.

(b) *Corrective action for negligent violations.* For each negligent violation, USDA will issue a Notice of Violation and require a corrective action plan from the producer. The producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

(1) The date by which the producer shall correct each negligent violation;

(2) Steps that will be taken to correct each negligent violation; and

(3) A description of the procedures that will demonstrate compliance must be submitted to USDA.

(c) *Negligent violations and criminal enforcement.* A producer who negligently violates this part shall not, as a result of that violation, be subject to any criminal enforcement action by any Federal, State, Tribal, or local government.

(d) *Subsequent negligent violations.* If a subsequent negligent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(e) *Negligent violations and license revocation.* A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(f) *Culpable mental state greater than negligence.* If USDA determines that a

licensee has violated the terms of the license or of this part with a culpable mental state greater than negligence:

(1) USDA shall immediately report the licensee to:

(i) The U.S. Attorney General; and

(ii) The chief law enforcement officer of the State or Indian territory, as applicable, where the production is located; and

(2) Paragraphs (a) and (b) of this section shall not apply to culpable violations.

§ 990.30 USDA producers; License suspension.

(a) USDA may issue a notice of suspension to a producer if USDA or its representative receives some credible evidence establishing that a producer has:

(1) Engaged in conduct violating a provision of this part; or

(2) Failed to comply with a written order from the USDA-AMS Administrator related to negligence as defined in this part.

(b) Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when USDA issued its notice of suspension, without prior written authorization from USDA.

(c) Any person whose license has been suspended shall not produce hemp during the period of suspension.

(d) A producer whose license has been suspended may appeal that decision in accordance with subpart D of this part.

(e) A producer whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension. If the license was issued more than three years prior to the date of restoration, the producer shall submit a new application and criminal history report to USDA.

(f) A producer whose license has been suspended may be required to provide, and operate under, a corrective action plan to fully restore their license.

§ 990.31 USDA licensees; Revocation.

USDA shall immediately revoke the license of a USDA licensee if such licensee:

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(a) Pleads guilty to, or is convicted of, any felony related to a controlled substance; or

(b) Made any materially false statement with regard to this part to USDA or its representatives with a culpable mental state greater than negligence; or

(c) Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated this part three times in five years.

§ 990.32 Recordkeeping requirements.

(a) USDA licensees shall maintain records of all hemp plants acquired, produced, handled, disposed of, or remediated as will substantiate the required reports.

(b) All records and reports shall be maintained for at least three years.

(c) All records shall be made available for inspection by USDA inspectors, auditors, or their representatives during reasonable business hours. The following records must be made available:

(1) Records regarding acquisition of hemp plants;

(2) Records regarding production and handling of hemp plants;

(3) Records regarding storage of hemp plants; and

(4) Records regarding disposal and remediation of all cannabis plants that do not meet the definition of hemp.

(d) USDA inspectors, auditors, or their representatives shall have access to any premises where hemp plants may be held during reasonable business hours.

(e) All reports and records required to be submitted to USDA as part of participation in the program in this part which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of USDA or their representatives. Confidential data or business information may be shared with applicable Federal, State, Tribal, or local law enforcement

or their designee in compliance with the Act.

Subpart D—Appeals

§ 990.40 General adverse action appeal process.

(a) Persons who believe they are adversely affected by the denial of a license application under the USDA hemp production program may appeal such decision to the AMS Administrator.

(b) Persons who believe they are adversely affected by the denial of a license renewal under the USDA hemp production program may appeal such decision to the AMS Administrator.

(c) Persons who believe they are adversely affected by the revocation or suspension of a USDA hemp production license may appeal such decision to the AMS Administrator.

(d) States and Indian Tribes that believe they are adversely affected by the denial of a proposed State or Tribal hemp plan may appeal such decision to the AMS Administrator.

§ 990.41 Appeals under the USDA hemp production plan.

(a) *Appealing a denied USDA-plan license application.* A license applicant may appeal the denial of a license application.

(1) If the AMS Administrator grants an applicant's appeal of a licensing denial, the applicant will be issued a USDA hemp production license.

(2) If the AMS Administrator denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing a denied USDA-plan license renewal.* A producer may appeal the denial of a license renewal.

(1) If the AMS Administrator grants a producer's appeal of a licensing renewal denial, the applicant's USDA hemp production license will be renewed.

(2) If the AMS Administrator denies the appeal, the applicant's license will

not be renewed. The denied producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Appealing a USDA-plan license termination or suspension.* A USDA hemp plan producer may appeal the revocation or suspension of a license.

(1) If the AMS Administrator grants the appeal of a license termination or suspension, the producer will retain their license.

(2) If the AMS Administrator denies the appeal, the producer's license will be terminated or suspended. The producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(d) *Filing period.* The appeal of a denied license application, denied license renewal, suspension, or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the AMS Administrator. The decision to deny an appeal of a license application or renewal, or suspend or terminate a license, is final unless a formal adjudicatory proceeding is requested within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(e) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(f) *What to include.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

§ 990.42 Appeals under a State or Tribal hemp production plan.

(a) *Appealing a State or Tribal hemp production plan application.* A State or Indian Tribe may appeal the denial of a proposed State or Tribal hemp production plan by the USDA to the AMS Administrator.

(1) If the AMS Administrator grants a State or Indian Tribe's appeal of a denied hemp plan application, the proposed State or Tribal hemp production plan shall be established as proposed.

(2) If the AMS Administrator denies an appeal, the proposed State or Tribal hemp production plan shall not be approved. Prospective producers located in the State or territory of the Indian Tribe may apply for hemp licenses under the terms of the USDA plan. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing the suspension or termination of a State or Tribal hemp production plan.* A State or Tribe may appeal the revocation by USDA of an approved State or Tribal hemp production plan.

(1) If the AMS Administrator grants a State or Indian Tribe's appeal of a State or Tribal hemp production plan suspension or revocation, the associated hemp production plan will remain in place and effective.

(2) If the AMS Administrator denies an appeal, the State or Tribal hemp production plan will be suspended or revoked as applicable. Producers located in that State or territory of the Indian Tribe may continue to produce hemp under their State or Tribal license until the end the calendar year in which the State or Tribal plan's disapproval was effective or when the State or Tribal license expires, whichever is earlier. Producers may apply for a USDA license under subpart C of this part unless hemp production is otherwise prohibited by the State or Indian Tribe. The State or Indian Tribe may

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request a formal adjudicatory proceeding be initiated to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Filing period.* The appeal of a State or Tribal hemp production plan suspension or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered "filed" on the date received by the AMS Administrator. The decision to deny a State or Tribal plan application or suspend or revoke approval of a plan, is final unless the decision is appealed in a timely manner.

(d) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(e) *What to include in appeal.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

Subpart E—Administrative Provisions

§ 990.60 Agents.

As provided under 7 CFR part 2, the Secretary may name any officer or employee of the United States or name any agency or division in the United States Department of Agriculture, to act as their agent or representative in connection with any of the provisions of this part.

§ 990.61 Severability.

If any provision of this part is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this part or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 990.62 [Reserved]

§ 990.63 Interstate transportation of hemp.

No State or Indian Tribe may prohibit the transportation or shipment of hemp lawfully produced under a State or Tribal plan approved under subpart B of this part, under a license issued under subpart C of this part, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable.

Subpart F—Reporting Requirements

§ 990.70 State and Tribal hemp reporting requirements.

(a) *State and Tribal hemp producer report.* Each State and Indian Tribe with a plan approved under this part shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under the applicable State and Tribal plans. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the information described in this paragraph (a).

(1)(i) For each new producer who is an individual and is licensed or authorized under the State or Tribal plan, the report shall include the full name of the individual, license or authorization identifier, Employee Identification Number ("EIN") of the business entity, business address, telephone number, and email address (if available).

(ii) For each new producer that is an entity and is licensed or authorized under the State or Tribal plan, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history report.

(iii) For each producer that was included in a previous report and whose reported information has changed, the

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report shall include the previously reported information and the new information.

(2) The status of each producer's license or authorization.

(3) The period covered by the report.

(4) Indication that there were no changes during the current reporting cycle, if applicable.

(b) *State and Tribal hemp disposal or remediation report.* If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of or remediated. States and Tribes with plans approved under this part shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal or remediation record of those plants and materials. This report would include information regarding name and contact information for each producer subject to a disposal or remediation during the reporting period, and date disposal or remediation was completed. If the first of the month fall on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) Producer license or authorization identifier.

(3) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation.

(4) Disposal or remediation completion date.

(5) Total acreage.

(c) *Annual report.* Each State or Indian Tribe with a plan approved under this part shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) Total planted acreage.

(2) Total harvested acreage.

(3) Total acreage disposed and remediated.

(d) *Test results report.* Each producer must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results to USDA. Informal testing conducted

throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain:

(1) Producer's license or authorization identifier.

(2) Name of producer.

(3) Business address of producer.

(4) Lot identification number for the sample.

(5) Name of laboratory and, no later than December 31, 2022, the DEA registration number of laboratory for testing.

(6) Date of test and report.

(7) Identification of a pre-harvest or post-harvest retest.

(8) Test result.

§ 990.71 USDA plan reporting requirements.

(a) *USDA licensing application.* USDA will accept applications on a rolling basis. Licenses will be valid until December 31 of the year three years after the license is issued. The license application will be used for both new and renewal applicants. The application shall include:

(1) *Contact information.* (i) For an applicant who is an individual, the application shall include full name of the individual, Employee Identification Number ("EIN") of the business entity, business address, telephone number, and email address (if available).

(ii) For an applicant that is an entity, the application shall include full name of the entity, the principal business location address, and the full name, title, and email address (if available) of each key participant of the entity.

(2) *Criminal history report.* As part of a complete application, each applicant shall provide a current Federal Bureau of Investigation's Identity History Summary. If the applicant is a business entity, a criminal history report shall be provided for each key participant.

(i) The applicant shall ensure the criminal history report accompanies the application.

(ii) The criminal history report must be dated within 60 days of submission of the application submittal.

(3) *Consent to comply with program requirements.* All applicants submitting a completed license application, in doing

so, consent to comply with the requirements of this part.

(b) *USDA licensee disposal and remediation form.* USDA licensee conducts a disposal or remediation activity, that licensee must report the activity on the appropriate form to USDA no later than 30 days after the date of completion of disposal or remediation activity. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) The USDA licensee's USDA license number.

(3) Geospatial location, or other valid land descriptor, for the production area subject to disposal or remediation.

(4) Date of completion of disposal or remediation.

(5) Signature of the USDA licensee or authorized representative.

(c) *USDA licensee annual report.* Each USDA licensee shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) USDA licensee's license number.

(2) USDA licensee's name.

(3) USDA licensee's address.

(4) Lot, location type, geospatial location, total planted acreage, total acreage disposed and remediated, and total harvested acreage.

(d) *Test results report.* Each USDA licensee must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain the information described in this paragraph (d) for each sample tested.

(1) USDA licensee's license number.

(2) Name of the USDA licensee.

(3) Business address of the USDA licensee.

(4) Lot identification number for the sample.

(5) Name of testing laboratory.

(6) Date of test and report.

(7) Identification of a pre-harvest or post-harvest retest.

(8) Test result.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Subpart A—Order Regulating Handling

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993.7	French prunes.
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993.9	Processed prunes.
993.10	Standard prunes.
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993.12	Substandard prunes.
993.13	Handle.
993.14	Handler.
993.15	Dehydrator.
993.16	Producer.
993.17	Ton.
993.18	Grade.
993.19a	Size.
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