



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

CHAPTER 17 – ALTERNATIVE AGRICULTURE PRODUCTION INDUSTRIAL HEMP

I. OVERVIEW

The recent federal legalization of hemp production is a perennial topic of discussion in Indian country. The hemp plant today is used in the production of over 25,000 different products, so it holds the potential for various economic opportunities through packing, harvesting, storing, and distributing legal industrial hemp products. Many tribes are looking at hemp production to improve economic conditions and stimulate further economic development and growth. Presently, there are legal steps and hurdles that must be addressed before Tribes—and all United States producers—can take full advantage of this potential opportunity, including the requirement of a tribal hemp plan and code that is approved by the U.S. Department of Agriculture. This Model Hemp Code hopes to take the first steps to assist Tribes in cultivating industrial hemp production.

A. CURRENT HEMP REGULATION

Hemp was originally on the Controlled Substance List under the Controlled Substances Act, Pub. L. No. 91-513, 84 Stat. 1236 (1971) (codified as amended at 21 U.S.C. §§ 801-971), a federal law which has recently prevented anyone from even researching hemp without a permit from the Drug Enforcement Agency. In 2014, Congress legalized growing and cultivating of industrial hemp for research purposes through Section 7606 of the Agricultural Act of 2014 (hereafter, “the 2014 Farm Bill”).

Section 7606 of the 2014 Farm Bill allowed hemp to be grown in states that have legalized such growth. Tribes were not included in the law as passed, nor were tribes contemplated as allowed to grow industrial hemp in the subsequent interpretations of Section 7606 undertaken by the various federal agencies with responsibilities to regulate and carry out this provision. Therefore, growing industrial hemp within tribal boundaries, even in a state where hemp production is legal, placed tribes at risk of criminal sanctions.

The Agricultural Improvement Act of 2018 (hereinafter, “the 2018 Farm Bill”) marked a dynamic paradigm shift for hemp production in the United States, legalizing the production of

1 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

industrial hemp and allowing for tribal and state parity in regulation of industrial hemp production within their respective jurisdictions. Section 10113 of the 2018 Farm Bill makes the production of industrial hemp legal under federal law so long as the end product contains less than a 0.3 percent concentration of tetrahydrocannabinol-9 (THC) and is produced in accordance with a U.S. Department of Agriculture (USDA) approved tribal or state regulatory plan. At a minimum, these plans must detail the jurisdiction's procedure for maintaining land records of where hemp is produced, THC testing procedures, disposal methods for plants and products over the 0.3 percent THC limit, and a procedure for properly handling violations of federal hemp laws. If the state or tribe does not develop such a plan, the USDA will assume regulatory authority within that jurisdiction according to a federally drafted regulatory plan meeting similar standards. Section 10114 of the 2018 Farm Bill explicitly prohibits a state or tribe from interfering with the interstate transportation and shipment of hemp or hemp products that are legally produced at the point of origin.

On October 29, 2019, the USDA Agricultural Marketing Service ("USDA-AMS") promulgated an Interim Final Rule (IFR) to implement the statutory provisions 2018 Farm Bill relating to industrial hemp production. This regulation further specifies the boundaries delineating state and tribal jurisdiction, prescribes procedures for the sampling and laboratory testing of hemp plants, and details certain requirements for tribes to conduct oversight of industrial hemp producers on their reservation. The IFR also specifies the federal plan by which the USDA will regulate producers in the absence of an approved tribal or state plan. Although the formal comment period ended in January 2020, USDA still encourages ongoing stakeholder feedback on this measure because such information will guide the development of a final regulation to be adopted after this IFR sunsets on November 1, 2021. Interested parties may submit this information by contacting the USDA Office of Tribal Relations or using the information available at <https://www.ams.usda.gov/rules-regulations/hemp/contact>. A complete copy of this IFR is available at <https://www.federalregister.gov/documents/2019/10/31/2019-23749/establishment-of-a-domestic-hemp-production-program>.

II. TRIBAL CODE EXAMPLES

The USDA-AMS continues to approve the submitted tribal and state hemp regulatory plans meeting the requirements of federal law on a rolling basis. The drafting team employed a geographical approach in selecting the diverse examples of federally approved tribal hemp

2 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

regulatory plans detailed below, allowing the reader to compare tribal regulatory structures while also accounting for possible regional and cultural differences as necessary. The number of tribal hemp plans approved by USDA continues to evolve and increase as this document is being written. The most up-to-date copies of approved tribal plans are available for review on the USDA-AMS website at: <https://www.federalregister.gov/documents/2019/10/31/2019-23749/establishment-of-a-domestic-hemp-production-program>.

BLACKFEET NATION

SECTION 1: SHORT TITLE

This Code shall be known and may be cited as the "Hemp Production Code."

SECTION 2: DECLARATION OF POLICY

It is the declared policy of the Blackfeet Tribal Business Council that hemp is a valuable agricultural crop and commodity in Blackfeet Territory. The purposes of this Code are to:

1. Promote the production of hemp, and the development of new commercial markets for producers through the sale of hemp;
2. Promote the creation of the Blackfeet Nation's hemp industry to the maximum extent permitted by law and allow producers to cultivate, handle, process, transport, and sell hemp for commercial purposes;
3. Regulate hemp as an agricultural commodity in Blackfeet Territory;
4. Enable affiliated Institutions of Higher Education, to conduct research regarding the production of hemp in Blackfeet Territory; and
5. Protect the political integrity, economic security, health, and welfare, and public safety of the Blackfeet Nation and its members.

SECTION 3: DEFINITIONS

1. "Acceptable hemp THC level" means, for the purpose of compliance with the requirements of this Title, is when the application of the measurement of uncertainty to

3 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

the reported THC content concentration level on a dry weight basis produces a distribution or range that includes three-tenths of one percent (0.3%) or less.

2. "Act" means the Agricultural Marketing Act of 1946.
3. "Administrator" means the Administrator of the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture.
4. "Agency" means the Blackfeet Law Enforcement Agency.
5. "AMS" means the Agricultural Marketing Service of the U.S. Department of Agriculture.
6. "Applicant" means a person, or a person who is authorized to sign for an entity, who applies to participate in the Blackfeet Tribal Hemp Program.
7. "BIA" means the Bureau of Indian Affairs.
8. "BLES" means the Blackfeet Law Enforcement Services.
9. "Blackfeet Territory" means, to the maximum extent allowed, all lands within the definition of "Indian country" as used in 18 U.S.C. § 1151 that apply to the Blackfeet Nation.
10. "Cannabis" means any form of a plant in the genus *Cannabis* in which the THC concentration on a dry weight basis has not yet been determined.
11. "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. 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.
12. "Corrective action plan" means a plan established by the Department for a producer to correct a negligent violation or non-compliance with a hemp production license under this Code.

4 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

13. "Council" means the Blackfeet Tribal Business Council, the governing body of the Blackfeet Nation.
14. "Criminal history report" means the Federal Bureau of Investigation's Identity History Summary.
15. "CSA" means the Controlled Substances Act as codified in 21 U.S.C. § 801 *et seq.*
16. "Culpable mental state greater than negligence" means to act, intentionally, knowingly, willfully, or recklessly.
17. "Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THC-A) into THC.
18. "Decarboxylation" means the removal or elimination of a carboxyl group from a molecule or organic compound.
19. "DEA" means the United States Drug Enforcement Agency.
20. "Department" means the Blackfeet Homeland Security Department.
21. "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. The percentage of THC on a dry weight basis means the percentage of THC, by weight, in cannabis item after excluding moisture from the item.
22. "Entity" means a 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, state, or local government entity.
23. "FSA" means the Farm Service Agency, an agency of the United States Department of Agriculture.
24. "Gas chromatography" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. Gas Chromatography relies on heat for separating and analyzing compounds that can be vaporized without decomposition.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

25. "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
26. "Greenhouse" means a structure with walls and roof made chiefly of transparent material in which hemp is produced. "Greenhouse" also includes structures used for hydroponic or other indoor hemp production.
27. "Handle" means to harvest or store hemp 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.
28. "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.
29. "High-performance liquid chromatography" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. High-performance liquid chromatography relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
30. "Hydroponic" means the method of growing plants without soil by instead using mineral nutrient solutions in a water solvent.
31. "Information Sharing System" means the database mandated under the Act which allows USDA to share information collected under state, tribal, and USDA plans with federal, state, tribal, and local law enforcement.
32. "Institution of Higher Education" means the meaning assigned to it by 20 U.S.C. § 1001. The Blackfeet Community College (BCC), and higher education institutions in partnership with BCC, are expressly declared Institutions of Higher Education.
33. "Key Participant" means a sole proprietor, a partner in a 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.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

34. "License" means a license from the Council for the production of hemp in Blackfeet Territory.
35. "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.
36. "Marijuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than three-tenths of one percent (0.3%).
37. "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.
38. "Negligence" means a failure to exercise the level of care that a reasonable and prudent person would exercise in complying with this Code.
39. "Phytocannabinoid" means cannabinoid chemical compounds found in the cannabis plant, two of which are THC and cannabidiol (CBD).
40. "Post-decarboxylation" means, a value determined after the process of decarboxylation that determines the total potential THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis.
41. "Produce" means to grow hemp for market, or for cultivation for market, in the United States.
42. "Producer" means an entity or person that is licensed or authorized to produce hemp under this Code.
43. "Reverse Distributor" means a person who is registered with the DEA to dispose of marijuana under the CSA.
44. "Secretary" means the Secretary of Agriculture of the United States.
45. "THC" means the chemical compound delta-9 tetrahydrocannabinol, the primary psychoactive component of cannabis.
46. "USDA" means the United States Department of Agriculture.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 4: HEMP AUTHORIZED AS AN AGRICULTURAL CROP

Hemp that has no more than three-tenths of one percent (0.3%) THC is considered an agricultural crop in Blackfeet Territory. Upon meeting the requirements of this Code, a person may produce hemp.

SECTION 5: HEMP PRODUCTION LICENSE

1. Any person producing or intending to produce hemp must have a valid license from the Department prior to producing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.
2. A person intending to produce hemp shall apply to the Department on a form prescribed by the Council. The Department shall consult and coordinate with the Council while developing and issuing licenses.
3. Applicants may submit a signed, complete, accurate, and legible application for a new license from the Department between January 1st and December 31st, 2020. In subsequent years, applicants may submit an application for a new license or renewal of an existing license to the Department from August 1st through December 31st of each year.
4. Applications must include the following information:
 - a. For each applicant who is an individual, the full name of the individual, principal business location address, telephone number, and email address (if available);
 - b. For each applicant who is an entity, the full name of the entity, the principal business location address, employer identification number (EIN) of the business, and the full name title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report;
 - c. 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. The applicant shall ensure the criminal history report accompanies the application. The criminal history report must be dated within sixty (60) days prior to the application submission date. A license application will

8 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

not be considered complete without all required criminal history reports;

- d. A legal description or street address of the land, other than any homesite on Blackfeet Tribal land or residence, on which the producer will produce hemp including, to the extent practicable its geospatial location.
- e. Acreage dedicated to the production of hemp, or greenhouse indoor square footage, other than any homesite on Blackfeet Tribal land or residence, dedicated to the production of hemp; and
- f. A \$1,000.00 application fee.

Applications missing required information shall be returned to the applicant as incomplete. If a license application is denied, the notification from the Department will explain the cause for denial. The applicant may resubmit a completed application.

5. All Licenses issued shall be valid for one (1) year from the date of issuance, unless otherwise extended or revoked at an earlier date, until December 31 of the following year. Hemp production 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 Code for initial applications.
6. 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, handling, or storage of hemp in a new location; or a change in the key participants producing under a licensed.
7. Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated, or encumbered.
8. Criminal history report

9 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- a. All costs associated with the criminal history report are the responsibility of the applicant and are not covered or included in the application fees.
 - b. The producer is responsible for all individuals that will engage in the cultivation or handling of hemp on its behalf.
 - c. The producer must report any felony convictions of each employee for whom the entity is required to submit a criminal history record report relating to controlled substances under federal, state, or tribal law to the Department within five (5) days of receiving notice of such conviction.
9. By submitting an application, the applicant acknowledges and agrees to the following terms and conditions:
- a. Any information provided to the Department may be provided to law enforcement agencies without further notice to the applicant;
 - b. The applicant or producer shall allow and fully cooperate with any inspection and sampling that the Department deems necessary;
 - c. Applicants submitting a completed license application, in doing so, consent to comply with the requirements of this Code and to Ordinance 90 regarding Blackfeet Environmental Protection requirements and the Blackfeet Land Use/Leasing Requirements.
10. If the applicant has completed the application process to the satisfaction of the Department, the Department shall recommend that the Tribal Council shall approve the application and issue the License.
11. Any license for the production of hemp in Blackfeet Territory shall be given a license identifier. The license identifier shall follow the following format: [BIA Tribal Code_License Number]. For example: C51201_0001

SECTION 6: INFORMATION MAINTENANCE

10 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

The Department shall maintain relevant information regarding land on which hemp is produced in Blackfeet Territory, including: contact information described in Section 5; a legal description of the land on which the producer will produce hemp, and to the extent practicable, its geospatial location; the status and number of the producer's license or authorization; and test results of hemp, for a period of not less than three (3) years.

SECTION 7: INFORMATION SUBMISSION

1. Producers must report their hemp crop acreage to the FSA and shall provide, at a minimum, the following information:
 - a. Legal description or 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 indoor square footage dedicated to the production of hemp.
 - c. Total acreage of hemp planted, harvested, and disposed.
 - d. License identifier.

All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.

2. Hemp Producer Report

The Department shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license issued for each Hemp producer. 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 following information:

11 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- a. For each new producer who is an individual, the full name of the individual, license identifier, business address, telephone number, and email address (if available);
- b. For each new producer who is an entity, the full name of the entity, the principal business location address, license identifier, EIN number, and the full name title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report;
- c. For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information;
- d. Legal description or 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, that information shall be provided for all production sites;
- e. The total acreage of hemp planted and harvested;
- f. The status of each producer's license or authorization;
- g. The period covered by the report; and
- h. An indication that there were no changes during the current reporting cycle, if applicable.

3. Hemp Disposal Report

- a. If a Producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance with the CSA and DEA regulations found in 21 CFR § 1317.15. The Department 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 record of those plants and materials. If the first of the month fall on a weekend or holiday, the report is due by the first business day following the due date. The report shall be

12 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the following information:

- i. The name and contact information (including address) for each producer subject to disposal during the reporting period;
- ii. The producer's license identifier;
- iii. The location information, including the lot number, location type, and geospatial location or other location description for the production are subject to disposal;
- iv. Laboratory test results report for the lot;
- v. Information on the agent handling the disposal, and if completed by the Agency, an attestation of the agents stating all of the marijuana was disposed and the method of disposal;
- vi. The disposal completion date; and
- vii. The total acreage of disposed plants and materials.

4. Annual Report

- a. The Department shall submit an annual report to USDA. The report form shall be submitted by December 15th of each year and contain the following information:
 - i. The total planted acreage;
 - ii. The total harvested acreage;
 - iii. The total acreage disposed.

13 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 8: SAMPLING PROCEDURE

1. Within fifteen (15) days prior to the anticipated harvest of cannabis plants, a Federal or Tribal law enforcement agency or other Federal or Tribal designated person shall collect samples from the flower material from such cannabis plants for THC concentration level testing as described in Section 9.
2. The method used for sampling from the flower material of the cannabis must be sufficient at a confidence level of ninety-five percent (95%) 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.
3. The sampling agency or designated person shall collect samples using the USDA's "Sampling guidelines for hemp growing facilities," available at:
<https://www.ams.usda.gov/sites/default/files/media/SamplingGuidelinesforHemp.pdf>
4. During the scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.
5. Representatives of the sampling agency shall 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 producer's license.
6. A producer shall not harvest the cannabis crop prior to samples being taken.

SECTION 9: THC TESTING

1. Analytical testing for purposes of detecting the concentration levels of THC in the flower material of the cannabis plant shall meet the following standard:
 - 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 and that the laboratory can successfully

14 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

perform the testing;

- c. The demonstration of testing validity must ensure consistent, accurate analytical performance; and
 - d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.
2. At a minimum, analytical testing of samples for THC concentration levels must use post decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of THC-A in hemp into THC and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection.
 3. The total THC concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty must be estimated and reported with test results. Laboratories shall use appropriate, validated¹ methods and procedures for all testing activities and evaluate measurement uncertainty.
 4. The producer is responsible for ensuring and paying the costs for samples to be received and prepared for testing by a DEA-registered laboratory.
 5. The laboratory shall follow the preparation and testing procedures as described in USDA's "Testing guidelines for Identifying Delta-9 Tetrahydrocannabinol (THC) Concentration in Hemp," available at:
<https://www.ams.usda.gov/sites/default/files/media/TestingGuidelinesforHemp.pdf>
 6. 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. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with Section 13.
 7. Samples of hemp plant material from one lot shall not be comingled with hemp plant material from other lots.

15 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

8. Laboratories must have an effective disposal procedure for cannabis that are tested and do not meet the requirements of this Code. The procedure must be in accordance with CSA and DEA regulations found at 21 CFR 1317.15.
9. A list of Hemp Analytical Testing Laboratories is available at:
<https://www.ams.usda.gov/rules-regulations/hemp/dea-laboratories>
10. Each producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots report the test results for all samples tested to the Department and USDA.
11. For each sample tested pursuant to this Section, the Producer shall obtain from a laboratory, or have the laboratory produce, a "Laboratory Test Result Report," available at:
https://www.ams.usda.gov/sites/default/files/media/LaboratoryTestResultsReportAMS_22.pdf
12. The laboratory test result report shall contain the following information:
 - a. Producer's license number;
 - b. Name of producer;
 - c. Business address of producer;
 - d. Lot identification information for the sample;
 - e. Name and DEA registration number of laboratory;
 - f. Date of test and report;
 - g. Identification of a retest; and
 - h. Test result.
13. Any hemp program licensee may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error. The licensee requesting the retest of the second sample will pay the cost of the test. The retest result

16 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

shall be issued to the licensee requesting the retest and a copy shall be provided to the Department and USDA or its agent.

14. The producer shall harvest the crop not more than fifteen (15) days following the date of sample collection.
15. If the producer fails to complete harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the lot shall be required to be submitted for testing.
16. Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Department.
17. Lots that meet the acceptable hemp THC level may enter the stream of commerce.
18. Lots tested and *not* certified by the DEA-registered laboratory not exceeding the acceptable hemp THC level may *not* be furthered handled, processed, or enter the stream of commerce and the licensee shall ensure the lot is disposed of in accordance with Section 13.

SECTION 10: NOTIFICATION REQUIREMENTS

1. The Department shall promptly notify the Administrator by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in this Code 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.
2. Each producer shall file with the Department documentation showing that the seeds planted are of a type and variety certified to have no more than three-tenths of one percent (0.3%) THC. The Council recognizes seed certifications by the Association of Official Seed Certifying Agencies (AOSCA) and the Organization for Economic Cooperation and Development (OECD) standards.
3. Each producer shall notify the Department of the sale or distribution of any hemp grown by the producer, including the name and address of the person receiving the hemp.

17 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 11: ENFORCEMENT PROCEDURES – VIOLATIONS

In general, A producer violation of this Code shall be subject to enforcement solely in accordance with the terms of this Section.

1. Negligent violation. Negligent violations shall include, but not be limited to:
 - a. Failure to provide a legal description or street address of land on which the producer produces hemp;
 - b. Failure to obtain a license or other required authorization from the Department; or
 - c. Production of cannabis with a THC concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this subsection if they make reasonable efforts to grow hemp and the cannabis does not have a THC concentration of more than one-half of one percent (0.5%) on a dry weight basis.
2. Corrective action plan. A producer described in Subsection (1) shall comply with a plan established by the Department to correct the negligent violation, including:
 - a. A reasonable date by which the producer shall correct the negligent violation; and
 - b. A requirement that the producer shall quarterly report to the Department on the compliance of the producer with the corrective action plan for a period of not less than the next two (2) calendar years from the date of the negligent violation.

The Department shall conduct inspections to determine if the corrective action plan has been implemented.

3. Result of a negligent violation. A producer that negligently violates this Code under subsection (1) 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.
4. Repeat violations.
 - a. A producer that negligently violates this Code under subsection (1) three (3) times in a five (5)-year period shall be ineligible to produce hemp for a period of five

18 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

(5) years beginning on the date of the third violation.

- b. A producer who violates clause (a) shall have his/her plants and plants products seized by the Agency and disposed of in accordance with Section 13.

5. Culpable Violations

- a. If the Department determines that a producer has violated this Code with a culpable mental state greater than negligence, the Department shall immediately report the producer to
 - i. The U.S. Attorney General; and
 - ii. The chief law enforcement officer of the Agency
- b. Subsections (1)-(4) of this Section shall not apply to the violation.

6. Felony

- a. In general. Except as provided in clause (b), any person convicted of a felony relating to a controlled substance under Federal law before, on, or after the date of Dec. 20, 2018 shall be ineligible, during the ten (10) year period following the date of the conviction, to participate in hemp production in Blackfeet Territory.
- b. Exception. Clause (a) shall not apply to any person producing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agriculture Act of 2014 (7 USC § 5940) before the date of Dec. 20, 2018, and whose conviction also occurred before that date
- c. Entities. If any key participant of an entity has been convicted of a felony related to a controlled substance and that conviction is not subject to the exception in clause (b), then the entity shall be ineligible during the ten (10) year period following the date of the conviction to participate in hemp production in Blackfeet Territory, unless the entity removes the convicted key participant within thirty (30) days after the conviction.

7. False Statement. Any person who materially falsifies any information contained in an application to participate in hemp production in Blackfeet Territory shall be ineligible to



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

participate under this Code.

8. Any person who is found to have violated subsections (5) -(7) shall have their plants and plants products seized by the Agency and disposed of in accordance with Section 13.

SECTION 12: INSPECTIONS

1. The Department shall have authority to conduct random inspections of producers and all lots to verify compliance with all requirements of the license issued.
2. The Department shall annually inspect a random sample of producers in Blackfeet Territory to verify that hemp is not produced in violation of this Code.
3. Inspections may be without advanced notice to producers.
4. Inspections may include sampling by Department inspectors for testing to determine hemp THC levels or any other Department defined purpose.
5. If a violation of this Code has been found as a result of an inspection, the violation shall be resolved by the procedure described in Section 11

SECTION 13: PROCEDURE FOR DISPOSAL OF NONCOMPLIANT CANNABIS

Disposal Requirements:

1. Cannabis that test higher than three-tenths of one percent (0.3%) THC concentration shall be disposed of in compliance with DEA disposal regulations found in 21 CFR § 1317 *et seq.*
2. All cannabis cultivated at the same lot and that tests higher than three-tenths of one percent (0.3%) THC shall be promptly disposed of according to the following disposition:

20 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- a. The producer shall, under the supervision of the Department and/or the Agency, collect all marijuana plants from the lot and turn them over to the Agency;
- b. The Agency shall then either:
 - i. Immediately contact and, as soon as practicable, deliver to or provide for the pick-up of the marijuana by a reverse distributor for disposal; or
 - ii. Dispose of the marijuana immediately on-site in such a way as to render it to a non-retrievable state in order to prevent diversion of any such substance to illicit purposes and to protect the public health and safety. If the Agency disposes of the marijuana on-site two agents of the Agency must sign an attestation that all of the marijuana was disposed and the method of disposal.
3. The Agency and/or Department shall collect all of the information required in the Hemp Disposal Report and Section 10.
4. The producer shall pay all costs for disposal.

SECTION 14: DISPOSITION OF FEES

All fees assessed as provided by this Code must be deposited in the Council's special fund for administering and enforcing this Code.

SECTION 15: LAND USE RESTRICTIONS AND SITE MODIFICATION

1. A producer shall not produce hemp on any site not listed in the license application.
2. A producer shall not produce hemp in any structure that is used for residential purposes.

SECTION 16: TRANSPORTATION REQUIREMENTS

21 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

A producer or other person responsible for the transportation of hemp must ensure the following documentation accompanies the hemp at all times during transport:

1. A copy of the producer's license that corresponds to the lot from which the hemp originated;
2. A copy of the pre-harvest test results that corresponds to the lot in transit; and
3. Any other documentation that may be required by the Department

SECTION 17: EFFECTS ON OTHER LAWS

Agricultural leases authorized under the American Indian Agricultural Resource Management Act of 1993 (25 USC § 3701 *et seq.*) and BIA agricultural lease regulations (25 CFR Part 162) in Blackfeet Territory for the production of hemp shall include provisions to implement and enforce this Code and shall not include provision which are in conflict with this Code

SECTION 18: COMPLIANCE WITH FEDERAL LAW

Nothing in this Code authorizes any person to violate any Federal or Tribal law, ordinance, or regulation.

SENECA NATION OF INDIANS

CHAPTER 1 GENERAL

PROVISIONS SECTION 1.01. PURPOSE

This Plan shall govern the cultivation of hemp on Seneca Nation Territories. Nation regulation of hemp production is necessary to protect the health, security, and general welfare of the Nation.

SECTION 1.02. CONSTITUTIONAL AND OTHER AUTHORITY

This Plan is consistent with and implements Section XIII of the Nation Constitution which provides as follows: “The Council shall have the power to make laws not inconsistent with this

22 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

Constitution.” This Law is also consistent with and implements Article 23 of the United Nations Declaration on the Rights of Indigenous Peoples which provides as follows: “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

SECTION 1.03. BACKGROUND AND INTENT

The Seneca Nation, a federally-recognized sovereign Indian nation, exercises its inherent rights of sovereignty to promote the self-determination and economic sovereignty of the Nation by regulating hemp production on Nation Territory to the fullest extent permitted by Nation and federal law.

SECTION 1.04. DEFINITIONS

- A. “Acceptable hemp THC level” means the successful application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol (THC) content concentration level on a dry weight basis which produces a distribution or range that includes 0.3% or less THC. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” affects neither the statutory definition of hemp, 7 U.S.C. 1639o (1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the Controlled Substances Act (CSA).
- B. “Applicant” means a Person requesting licensure under this Plan.
- C. “Cannabidiol” or “CBD” is one of at least 113 active cannabinoids identified in *Cannabis Sativa L.* CBD can be produced by extracting the cannabinoid from hemp.
- D. “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis Sativa* is a species, and *Cannabis Indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

23 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- E. “Council” means the Seneca Nation Council.
- F. “Culpable mental state greater than negligence” means to act intentionally, willfully, knowingly, recklessly, or with criminal negligence.
- G. “Delta-9 tetrahydrocannabinol” or “THC” means it is the primary psychoactive component of cannabis.
- H. “GPS” means Global Positioning System.
- I. “Hemp” or “Industrial 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 delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- J. “Hemp Compliance Administrator” (or “HCA”) means the Seneca Nation’s officer, or its designee, responsible for regulating and monitoring the production of Hemp within Seneca Nation Territories, as established by this Plan. The term may include employees, agents, and other designees of the HCA.
- K. “Hemp Product” means a product of industrial hemp that meets one or more of the following descriptions:
 - 1. (a) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9 THC content above 0.3 percent; and (b) Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above 0.3 percent);
 - 2. The product is CBD that was derived from hemp, in accordance with this Plan; or
 - 3. The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- L. “High-performance liquid chromatography” or “HPLC” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
- M. “Key Participant” means a sole proprietor, a partner in a partnership, or a person with



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

executive managerial control in a corporation. A person with executive managerial control includes persons such as the chief executive officer, chief operating officer and chief financial officer, and does not include non-executive managers such as farm or field workers or shift managers.

- N. “Location ID” means the unique identifier initiated by the Applicant and established by the Hemp Compliance Administrator. The Location ID consists of a unique set of GPS coordinates for each Lot where Hemp will be grown, and each building where Hemp will be handled, stored, processed, or distributed.
- O. “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout.
- P. “Measurement of Uncertainty” or “MU” 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.
- Q. “Member” or “Nation member” means any person, regardless of age, who is an enrolled member of the Nation.
- R. “Negligence” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.
- S. “Non-Compliant Hemp” means hemp found to be outside the acceptable hemp THC level.
- T. “Person” means an individual or business entity.
- U. “Pesticide” means any substance or mixture of substances intended to:
 - a. Prevent, destroy, control, repel, attract, or mitigate any pest; or
 - b. Be used as a plant regulator, defoliant, or desiccant; or
 - c. Be used as a nitrogen stabilizer.
- V. “Plan” means the Seneca Nation Hemp Production Plan.
- W. “Pre-harvest sample” means a representative sample taken from a particular Lot collected in accordance with the procedures established by this Plan.
- X. “Producer” means a Person authorized and licensed to grow, handle, store, and market hemp at one or more specified locations on the Territory of the Seneca Nation.

25 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- Y. “Representative Sample” means a sample with an adequate number of units that are intended to ensure that the sample accurately portrays the material being sampled.
- Z. “Sampling Agent” means a tribally-designated law enforcement agent with the required USDA training authorized to collect hemp samples.
- AA. “Secretary” means the Secretary of the United States Department of Agriculture.
- BB. “Seneca Nation” or “Nation” means the Seneca Nation, a federally recognized Indian Tribe, including its political subdivisions and instrumentalities.
- CC. “Territory” or “Reservation” means a Territory held by the Seneca Nation in restricted fee.
- DD. “Volunteer cannabis plant” means any cannabis plant that renders itself without cultivation.

CHAPTER 2. HEMP COMPLIANCE ADMINISTRATOR

SECTION 2.01. ESTABLISHMENT, DURATION, AND ATTRIBUTES

- A. The Seneca Nation hereby establishes the Hemp Compliance Administrator (HCA) as the regulatory body for the production of Hemp on Nation Territory, in accordance with this Plan.
- B. The HCA is under the directive of the Seneca Nation Council, and may fulfill any and all obligations of the Council under this Plan.
- C. In carrying out its purpose under this Plan, the HCA shall operate as an instrumentality of the Nation and shall function as an arm of the Nation.
- D. The term limit shall be at the discretion of the Council.
- E. The HCA shall be appointed by the Council and must be:
1. A Member of the Seneca Nation.

26 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

2. At least twenty-five (25) years of age.
3. Free of felony convictions in any tribal, state, or federal jurisdictions.
4. Free of financial interest or active participation in hemp production or employment by a Producer under this Plan.

F. Removal. The Seneca Nation may remove the HCA for the following reasons: conviction of a felony, neglect of duty, malfeasance in office, misfeasance in office, misconduct in any way, any conduct that threatens the honesty or integrity of the Hemp Program or otherwise violates the letter or intent of this Law or other applicable Nation law, or for other good cause shown.

G. Vacancies. The Council shall appoint an HCA when the position becomes vacant.

H. Training, Equipment, and Staff. The Seneca Nation shall provide the HCA with adequate training, equipment, and compensation to fully carry out its duties.

SECTION 2.02. DUTIES AND RESPONSIBILITIES

A. The HCA shall have the authority and responsibility to enforce the provisions of this Plan.

B. The HCA:

1. May issue or deny licensure for the production of hemp on Seneca Nation Territories.
2. Shall have access to and inspect, examine, photocopy, and audit all papers, books, and records, and property with regards to hemp operations conducted on Nation Territory.
3. Shall ensure Producers' compliance with this Plan and all Nation laws or policies applicable to the cultivation of hemp; and Federal laws, rules and regulations regarding hemp. This includes investigating any suspicion of wrongdoing associated with any hemp activities and reporting any potential criminal violations to law enforcement.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

4. Shall assess and approve Location ID's on Seneca Nation Territories.
5. Shall assess and evaluate the potential environmental impacts of a hemp business' proposed operations.
6. Shall inspect, examine, and monitor all hemp-related operations, including:
 - i. Performing, with the Sampling Agent, pre-harvest testing;
 - ii. Inspecting and copying relevant records;
 - i. Conducting, with the Sampling Agent, annual inspections of, or at a minimum of once per growing season, a random sample of a Producers hemp.
7. Shall supervise the disposal of all Non-Compliant Hemp.
8. Shall comply with all reporting and recordkeeping requirements, in accordance with Section 4.05.
9. Shall provide immediate notice to the USDA of adverse test results. May revoke or suspend a Hemp License for violations of Nation laws or policies applicable to the cultivation of Hemp or any violations of this Plan in accordance with the procedures in Section 4.04.
10. May assess civil fines against any Person(s) in violation of this Plan. Any civil fines collected shall be submitted to the Nation's Fiscal Department.
11. Shall adopt policies and procedures to support the implementation of this Plan.
12. Shall educate and inform Nation members and the surrounding local communities about the Nation's hemp program.

SECTION 2.03. LIMITATION OF POWERS

The HCA shall not regulate the Nation or any entities except with respect to the activities of the Hemp Production Program.

SECTION 2.04 COMPENSATION

28 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

The HCA, including its employees, agents, and other designees shall be compensated in an amount determined by Nation Council.

SECTION 2.05. SOVEREIGN IMMUNITY

- A. The HCA shall enjoy all of the privileges and immunities of the Nation, except as specifically limited by this Law, including sovereign immunity from suit in state, federal, or tribal court.
- B. The HCA shall have no authority to waive the sovereign immunity of the Nation, the Designee, or any other Nation entity.
- C. Notwithstanding any other provision herein, the HCA's immunity from suit shall at all times be deemed waived for actions against the office initiated by the Nation Council.

SECTION 2.06. INDEMNIFICATION

The Nation shall indemnify the HCA against expenses reasonably incurred in the pursuit of their duties and activities performed on behalf of the Plan, directly or indirectly, including but not limited to lawsuits, costs and attorney fees, in defense of any action suit or proceeding, civil or criminal, in which such designee is made a party by reason of being or having been the HCA. However, no such person shall have the right of reimbursement or indemnity in relation to matters which they shall be adjudged in such action, suit or proceeding to be liable for dereliction of duty or for misconduct in the performance of such duty. The right of indemnity shall also apply to claims or suits which are settled, where the court having jurisdiction over such matter approves the settlement, or where the HCA approves the claim. The right of indemnity shall be in addition to all other rights to which an HCA may be entitled.

SECTION 2.07. ETHICAL MATTERS

The HCA shall be considered a "public official" for purposes of the Nation's Ethics Law.

SECTION 2.08. ANNUAL REPORTS

The HCA shall provide an annual report to the Nation Council summarizing the HCA's official actions to keep the Nation Council fully informed as to the status of Hemp Production on

29 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

Nation Territory.

CHAPTER 3. HEMP PRODUCER LICENSING

Subject to the provisions under this Plan, a Producer may plant, grow, cultivate, harvest, sample, test, process, transport, market, and transfer hemp to the greatest extent allowed under Nation and federal law.

SECTION 3.01. LICENSING FOR HEMP PRODUCERS

- A. Only a Person licensed with the HCA under this Section may grow, handle, store, and market hemp. A Person licensed under this Section will be classified a Producer.
 - 1. Any Person found to be growing, handling, storing, and marketing hemp without a license is subject to enforcement provisions under this Plan.
- B. Each Applicant shall provide a complete criminal background check with their application.
- C. Applicants for licensing under this Section must submit to the HCA, in a form and manner determined by the HCA, the following information:
 - 1. For an individual Producer:
 - i. The Applicant's (non-business entity) name;
 - ii. The Applicant's telephone number, email address (if available), residential address, mailing address, or another form of contact information;
 - 2. For a business entity Producer:
 - i. Full name of business;
 - ii. Address and telephone number of the principal business location;
 - iii. Full name of Key Participants and all signatory participants to the business;
 - iv. Email address (if available); and
 - 3. The Location ID for each Lot where Hemp will be grown;
 - 4. GPS map and legal land description for each Location ID;
 - 5. Payment in the amount and form determined by the HCA for licensure; and

30 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

6. Any other information the HCA determines necessary pursuant to this subsection.
- D. Licensure under this subsection is a personal privilege and is not transferable to any other person, business, or entity.
- E. A Producer licensed under this subsection must keep records for a minimum of three (3) years, and as otherwise required by the HCA.
- F. The Nation shall assign each Producer a license identifier in a format prescribed by the USDA.
- G. 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 Plan for initial applications unless there has been an amendment to the regulations in this Plan since approval of the initial or last application.
- H. All licenses issued shall be valid for three (3) years from date of issuance, unless otherwise extended, or revoked at an earlier date pursuant to the provisions outlined in this Plan.
- I. Current and valid licenses may be renewed by submitting a renewal application to the HCA no later than thirty (30) days prior to the date of the License expiration.

SECTION 3.02. APPLICANT/PRODUCER COVENANTS

By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:

- A. Any information provided to the Hemp Compliance Administrator, or designee, may be provided to the United States Department of Agriculture (USDA) and law enforcement agencies without further notice to Applicant or Producer;
- B. Applicants must have the legal right to produce hemp for each Location ID provided in the application, and the legal authority to grant the HCA access for inspection, sampling, and testing.
- C. The Applicant or Producer shall allow and fully cooperate with any inspection and

31 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

sampling that the HCA deems necessary, including granting unrestricted access to the HCA on the licensed premises;

- D. The Applicant or Producer shall submit all required reports by the applicable due-date specified by the Hemp Compliance Administrator;
- E. Applicants shall obtain and submit their Federal Bureau of Investigation (FBI) criminal background check to the Hemp Compliance Administrator;
- F. The Applicant or Producer must report any felony convictions under federal law to the Nation within five (5) business days of receiving notice of such conviction; and
- G. The Applicant or Producer shall report any material changes to the HCA concerning application contents, business operations, Key Participants, Location ID, and any other information that may alter the way their Hemp Production License is regulated within (5) days of the material change.

SECTION 3.03. INSPECTIONS

- A. The HCA, with the tribally designated law enforcement agent, shall have the authority to conduct at least one (1) random inspection of a licensed premise at any point during the crop's growth phase and to take a representative sample of each Lot to verify compliance with all requirements of the license issued.
- B. The inspection sites shall be selected at random among all Producers at intermittent points throughout the calendar year, selection method and sampling times are to be determined by the HCA.
- C. Inspection visits may be conducted at any time by the HCA during regular business hours or within a twenty-four (24) hour notice outside of business hours. The HCA and its designee, including the Sampling Agent, shall be granted unrestricted access to the licensed premises and unrestricted access to all plants, parts, and seeds within the Location ID, whether growing or harvested, and all land, buildings, and other structures used for the cultivation of hemp, and all documents and records pertaining to the Producer's Hemp business.
- D. All samples collected by the HCA shall become the property of the Nation and no compensation shall be owed by the Nation for such samples.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- E. The Nation shall keep test results for all hemp tested for a minimum of three (3) years.
- F. If a crop is determined to contain a tetrahydrocannabinol (THC) concentration exceeding the acceptable hemp THC level, the Hemp Compliance Administrator, with the required aid of the tribally designated law enforcement agent, may seize, detain, or dispose of the crop pursuant to Section 4.03.
- G. If it is found that during inspection, voluntary cannabis is growing outside of an authorized outdoor growing plot, proper disposal methods will be followed pursuant to Section 4.03.

SECTION 3.04. FEES

The HCA shall charge an application fee for each license under this Plan. The HCA may set and collect additional fees, including license renewal and testing fees, in amounts that are reasonable and necessary to cover the costs of administering and enforcing the Plan. All revenue shall be utilized to defray the costs of administering this Plan.

SECTION 3.05. TRANSPORTATION REQUIREMENTS

The Producer, or a designated representative of the Producer, responsible for the transportation of hemp or hemp products must ensure that the following documentation accompanies the hemp at all times during transport:

- A. A copy of the license that corresponds to the licensed premise from which the hemp originated;
- B. A copy of the pre-harvest test results that correspond to the hemp in transit as identified by the Location ID that accompanies the hemp;
- C. A copy of a transport manifest that includes all information required to be documented by the Nation; and
- D. Any other documentation that may be required by the HCA.

SECTION 3.06. REVOCATION OR SUSPENSION OF HEMP LICENSE

The HCA may decline to grant a new license, may decline to renew an existing license, and

33 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

may revoke or suspend a license already granted at any time for any Producer if such Person violates:

- A. Any provision of this Plan;
- B. A rule promulgated by the HCA in furtherance of this subsection; or
- C. Any Nation law or policy applicable to the cultivation of hemp.

CHAPTER 4. PROGRAM REQUIREMENTS TO REGULATE AND MONITOR THE PRODUCTION OF HEMP

The Seneca Nation assumes primary regulatory authority over the production of hemp to the fullest extent permitted by law and in accordance with this Plan. The Nation intends to implement a strong and effective regulatory and enforcement system that will preserve the public safety and health of its members.

SECTION 4.01. MAINTENANCE OF RECORDS

- A. The HCA shall collect, and retain for a period of at least three (3) calendar years:
 - 1. Location ID information for every Lot, site or location where the HCA has approved hemp to be grown.
 - 2. All documents and records pertaining to the Producer's business.
 - 3. All documents and records pertaining to the HCA's and Producer's sampling, testing, inspections and disposals.

SECTION 4.02. PRE-HARVEST TESTING REQUIREMENTS

- A. All Hemp produced within Seneca Nation Territory must be produced in accordance with this Plan.
- B. The Producer shall not harvest Hemp before testing by the HCA or its designee, including the Sampling Agent.

34 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- C. The HCA or its designee, with the Sampling Agent, must have complete and unrestricted access during business hours to all hemp, all land, buildings, etc. used for cultivation, handling, and/or storage of Hemp.
- D. The Producer must contact the HCA and arrange for and ensure the sampling of each Location ID no more than fifteen (15) days prior to anticipated harvest for the purpose of ensuring that the Location ID's total THC is within the acceptable hemp THC level on a dry weight basis.
- E. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent (95%) that no more than one percent (1%) of the plants in the Lot would exceed the acceptable hemp THC level.
- F. During a scheduled sample collection, the producer or an authorized representative of the Producer shall be present at the growing site.
- G. Procedures for Sampling
 - 1. One Location ID is to be sampled at a time to ensure the hemp sampled and equipment used are not commingled across Lots; then proper sanitization of equipment applied before the next sampling process.
 - 2. The following equipment and supplies may be used:
 - i. Garden pruners/shears (Cleaned prior to and following each composite sample; rubbing alcohol shall be used for sanitization and cleaning);
 - ii. Sample bags, paper;
 - a. The size of the bags will depend upon the number of clippings collected per Lot.
 - b. The bags should be made from material known to be free from THC.
 - iii. Security tape;
 - iv. Permanent markers;
 - v. Sample collection forms;
 - vi. GPS unit; and
 - vii. Disposable gloves – Nitrile.
 - 3. The HCA, with the assistance of the Sampling Agent, must collect the minimum

35 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

number of plant specimens necessary to represent a homogenous composition of the Lot.

4. Surveillance of the growing area.
 - i. The Sampling Agent shall verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the Producer to the Seneca Nation Hemp Production Program.
 - ii. The Sampling Agent shall estimate the average height, appearance, approximate density, condition of plants, and degree of maturity of the flowering material.
 - iii. The Sampling Agent shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.

5. Field Sampling.
 - i. For purposes of determining the number of individual plants to select for sampling, the size of the grow area must be considered;
 - ii. For Lots of less than (1) acre, including greenhouses, select a minimum of (1) plant, then take a cutting from the plant to form a sample. For Lots of (2) to (10) acres including greenhouses, select a minimum of one plant per acre, then take cuttings of each plant, then combine to form a composite sample.
 - a. A minimum of (5) plants shall have cuttings taken from each Lot of (10) acres or less.
 - iii. For growing areas larger than (10) acres, including greenhouses, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-199.

6. Collecting Samples from each Lot:
 - i. Sampling Agents shall always walk at right angles to the rows of plants, beginning at one point of the Lot and walking towards another point on the opposite side of the Lot.
 - ii. While walking through the growing area, the Sampling Agent shall cut at least the outlined number of flowering materials per acreage, at random but convenient distances; while avoiding collecting too many specimens from the borders of the field/greenhouse.
 - iii. The cut shall be made just underneath the flowering material, located at the top one-third of the plant; the sample size must be of adequate

36 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

volume to accommodate laboratory tests.

- iv. Utilize a paper sample bag for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings needed per acre.
- v. Seal each bag and record the sample number.

7. Sample identification:

- i. The Sampling Agent shall seal each bag and record the sample identification number. The sample identification shall include, at a minimum:
 - a. Sampling Agent information;
 - b. Location ID;
 - c. Name and contact information of the Producer;
 - d. Hemp Producer license number;
 - e. Date of sample;
 - f. Disposition of Hemp Producer license.

H. Testing Methodology.

1. The Producer shall identify a laboratory that adheres to the standards of performance as outlined in the Interim Final Rule or DEA-registered laboratory capable of testing, using post-decarboxylation or high-performance liquid chromatography (HPLC), for delta-9 tetrahydrocannabinol concentration levels to determine the total THC concentration level on a dry-weight basis.
2. Testing costs and fees shall be the responsibility of the Producer.
3. Any test of a representative sample exceeding the acceptable hemp THC level is conclusive evidence that the Lot is not in compliance, hemp may not be further handled, processed, or enter commerce, and Producer shall ensure the Lot is properly disposed of.
4. Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:
 - i. Laboratory quality assurance must ensure the validity and reliability of test results;
 - ii. 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;



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- iii. The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - iv. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and
 - v. An effective disposal procedure for non-compliant hemp that does not meet the requirements of this part. The procedure must be in accordance with Hemp Disposal Activities per the Enforcement Discretion guidance that will render the non-compliant hemp as non-retrievable or DEA reverse distributor regulations found at 21 CFR 1317.15.
 - vi. 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
5. For each sample tested pursuant to this Section, the Producer shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:
- i. 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;
 - ii. The date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
 - iii. The total THC concentration contained in the test sample; and
 - iv. A statement indicating whether the sample contained a THC concentration that does not exceed the acceptable hemp THC level on a dry weight basis.
6. Nothing in this Section shall prevent a Producer from voluntarily collecting samples and testing Hemp for quality assurance and research and development purposes.
7. If the Producer fails to complete harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the Lot shall be required to be submitted for testing.
8. Samples from Lots that meet the acceptable hemp THC level may enter the stream of commerce.
9. Cannabis found to be outside the acceptable hemp THC level must be immediately reported to the USDA and sequestered for proper disposal.

38 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 4.03. DISPOSAL OF NON-COMPLIANT HEMP AND HEMP PRODUCTS

- A. Cannabis plants exceeding the acceptable hemp THC level must be disposed of in accordance with the Controlled Substances Act (CSA) and U.S. Drug Enforcement Administration (DEA) regulations, or Hemp Disposal Activities per the Enforcement Discretion guidance that will render the non-compliant hemp as non-retrievable, at the cost of the Producer.
- B. The Nation shall promptly notify the USDA of any occurrence of plants not meeting the Hemp definition and attach records showing disposal of all plants in the Lot.
- C. The Nation Hemp Disposal Report and each corresponding disposition certificate must be submitted to the USDA on the 1st day of each month. If this date falls on a holiday or weekend, the report is due the next business day.
- D. The Licensee must notify and receive prior approval from the HCA before any destruction of a non-compliant crop is to take place.
- E. The Licensee shall be responsible for the cost of crop destruction.

SECTION 4.04. ENFORCEMENT, NEGLIGENT VIOLATIONS, CULPABLE VIOLATIONS, AND CORRECTIVE ACTION PLANS

- A. The HCA shall impose a corrective action plan for a negligent violation of the Plan. Negligent violations include the following:
 - 1. Failing to disclose, or to provide required information, including a legal description about, a site or Lot where hemp is being grown or produced;
 - 2. Failing to obtain a necessary license from the Seneca Nation or its Designee; or a necessary authorization from a federal agency; and
 - 3. Producing cannabis that is found to be outside of the acceptable hemp THC level; and
 - 4. Harvesting hemp prior to pre-harvest testing.

39 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

5. The HCA shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.
- B. A Person who is found by the HCA to have negligently violated provisions of this Plan governing that Person's participation in the hemp program shall be subject to a corrective action plan at the discretion of the HCA. Corrective action plans issued by the HCA shall include, at minimum, the following information:
1. A reasonable date by which the Person shall correct his or her violation; and
 2. A requirement for periodic reports from the Person to the HCA or its Designee about the Person's compliance with the corrective action plan and regulations for a period of at least two (2) years from the date of the corrective action plan.
- C. The HCA shall conduct inspections to determine if the Corrective Action Plan is followed.
- D. A Producer that negligently violates this Plan shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Seneca Nation, or local government.
- E. A Person who is found by the HCA to have negligently violated provisions of this Plan governing that Person's participation in the hemp program three (3) times in a five (5) year period shall be ineligible to hold a license for a period of five (5) years beginning on the date of the third violation.
- F. A Producer of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level, does not commit a negligent violation under subsection 4.04 (A) if the Producer make reasonable efforts to grow hemp and the cannabis does not have a delta- 9 tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis.
- G. A Person who is found by the HCA to have violated provisions of this Plan governing that Person's participation in the hemp program with a culpable mental state greater than negligence shall be immediately reported to the following law enforcement agencies:
1. The Chief Marshal of the Seneca Nation;
 2. The Attorney General of the United States; and
 3. Paragraphs (B) and (D) of this section shall not apply to culpable violations.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

- H. Any Person or Key Participant convicted of a felony relating to a controlled substance under State or Federal law shall be ineligible, during the 10-year period following the date of conviction, to produce hemp under this Plan.
1. Civil fines may be assessed per discretion of the HCA when convictions occur while licensed under this Plan.
 2. Any Producer growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date shall be exempted from paragraph (H) of this section.
 3. For Producers that are entities, the HCA shall determine which employee(s) of a producer shall be considered to be participating in the Plan and subject to the felony conviction restriction for purposes of paragraph (F) of this section.
- I. Any Person who materially falsifies any information contained in an application to participate in the hemp program established by the Seneca Nation shall be ineligible to produce hemp under this Plan. Civil fines may be assessed per discretion of the HCA.
- J. Civil fines may be assessed at the discretion of the HCA in addition to the corrective measures referenced in this section.

SECTION 4.05. REPORTING TO THE SECRETARY

- A. Producer Reports. Not more than thirty (30) days after receiving and compiling the hemp Producer's information, on the first of the month, the Hemp Compliance Administrator shall provide to the United States Secretary of Agriculture or the Secretary's designee, the Nation Hemp Producer Report (AMS-23). If the first of the month falls on a holiday or weekend, the reports are due the next business day. Producer Reports shall include the following information:
1. Producer information
 - i. For each new *individual* Producer, report shall contain the full name, license number, business address, telephone and email (if available).
 - ii. For each new *entity* Producer, report shall contain the entity name, principal business location address, license number, and the full name,

41 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.

- iii. For each existing Producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.

2. Status of Producer license
3. Period covered by the report
4. Certification of no changes during the current reporting cycle, if applicable.

B. Disposal Reports. The HCA shall submit the Nation Hemp Disposal Report (AMS-24) on the first day of each month. If the date falls on a holiday or weekend, the report is due the next business day. Disposal Reports shall include the following information:

1. Name and address for each Hemp Producer
2. Producer license number
3. Location information such as Lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.
4. Information on the agent handling the disposal
5. Date disposal was completed
6. Total acreage

C. Annual Reports. The HCA shall submit the Nation Hemp Annual Report (AMS-25) by December 15th of each year. Annual Reports shall include the following information:

1. Total planted acreage
2. Total harvested acreage
3. Total acreage disposal

42 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

D. Test Results Reports. Each Producer shall ensure that the DEA-registered laboratory or a laboratory that adheres to the standards of performance as outlined in the Interim Final Rule; that conducts the test of the sample(s) from its lots reports the test results for all samples tested to the USDA. Test Results Reports shall contain, for each sample tested, the following information

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 and DEA registration number or pertinent registration number of laboratory;
6. Date of test and report;
7. Identification of a retest;
8. Test result.

SECTION 4.06. ESTABLISHING RECORDS WITH THE USDA FARM SERVICE AGENCY

- A. All producers licensed to produce under the Nation Hemp Plan shall report hemp crop acreage with the Farm Service Agency (FSA) and shall provide, at minimum, the following information:
1. 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, that information shall be provided for all production sites.
 2. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
 3. License or authorization identifier.

43 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 4.07. IMPORTATION OF HEMP SEEDS

- A. A Person seeking to obtain hemp seeds from an international source shall ensure the product is accompanied by:
1. A complete phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or
 2. If the seed is grown in Canada, either of the requirements of subsection (1) of this paragraph or a complete Federal Seed Analysis Certificate.
- B. A Person seeking to obtain hemp seeds from any source shall do so in accordance with the Federal Seed Act.

SECTION 4.08. INTERSTATE COMMERCE

The Nation reserves the right to engage in interstate commerce, to the fullest extent permitted by law. Nothing in this Plan prohibits the interstate commerce of Hemp or Hemp Products produced in accordance with this Plan.

CHAPTER 5. SUBMISSION OF HEMP PLAN AND MISCELLANEOUS PROVISIONS SECTION

5.01. SUBMISSION TO THE SECRETARY OF AGRICULTURE

Upon approval by the Nation Council, the Seneca Nation Hemp Plan shall be submitted to the United States Secretary of Agriculture for approval.

SECTION 5.02. CERTIFICATION TO THE SECRETARY OF AGRICULTURE

The President's Office shall attach for submission to the Secretary of Agriculture certification that the Nation has the resources and personnel to carry out the practices and procedures herein.

SECTION 5.03. PROMULGATION OF ADDITIONAL RULES

The HCA may promulgate rules pursuant to the provisions of this Plan to appropriately carry out the provisions herein.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

SECTION 5.04. AMENDMENTS

If the Plan is substantively revised in a way that alters the way that this law meets the requirements of the Interim Rule: Establishment of a Domestic Hemp Production Program; the Seneca Nation shall submit the amended Plan within a calendar year from when the new Nation Law or regulations became effective.

SECTION 5.05. GOVERNMENT-TO-GOVERNMENT RELATIONSHIP; EXECUTIVE ORDER 13175

Coordination with the United States Department of Agriculture and other federal agencies on matters regarding the regulation of the growth and production of hemp on Nation Territory shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Nation government. Essential to the government-to-government relationship is mutual respect and deference to governance decisions of the Nation. Future consultations on regulatory matters should reflect these concerns and the fact that the Nation, through its own policy-setting process, is best situated to determine the needs of the Nation, its members, and its future. All references to Executive Order 13175 shall include any future amendments thereto.

SECTION 5.06. GOVERNING LAW

All rights and liabilities associated with enactment of this Plan, or the licensures made hereunder, shall be construed according to the laws of the Seneca Nation.

SECTION 5.07. SEVERABILITY

If any provision of this Plan, or its application to any person or circumstance is held invalid, the remainder of the Plan, or the application of this provision to other persons or circumstances is not affected.

SECTION 5.08. NO WAIVER OF NATION SOVEREIGNTY

All rights and liabilities associated with the enactment of this Plan shall be construed and enforced according to the laws of the Nation. The Nation Council is vested with the authority and discretion to construe the terms of this Plan. Nothing in this Plan or the related policies



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

or procedures, if any, shall be construed as a waiver of sovereign immunity or to make applicable any laws or regulations which the Nation is entitled to be exempt from in accordance with its sovereign status.

SECTION 5.09. EFFECTIVE DATE

The provisions of this Plan shall be effective as of the date of adoption by the Nation Council.

III. FEDERAL CODE EXAMPLES

2018 Farm Bill

The Agricultural Improvement Act 2018 (the “2018 Farm Bill”), Pub. L. No. 115-334, 132 Stat. 4908, fully legalized the production of industrial hemp beyond the agricultural pilot projects authorized in the 2014 Farm Bill. Accordingly, Section 7605 of the 2018 Farm Bill requires USDA to conduct a study of existing agricultural hemp pilot programs “to determine the economic viability of the domestic production and sale of industrial hemp” by reviewing each pilot program and research related to industrial hemp. Furthermore, Section 7605 also specifies that the agricultural pilot program authorities in the 2014 Farm Bill will expire on October 31, 2020, which is one year after the USDA released its own federal hemp regulatory plan as part of the aforementioned Interim Final Rule.

Listed below are the relevant provisions of the 2018 Farm Bill detailing the legalization of industrial hemp production:

SEC. 10113. HEMP PRODUCTION.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

“Subtitle G—Hemp Production

“SEC. 297A. DEFINITIONS.

“In this subtitle:

“(1) HEMP.—The term ‘hemp’ means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids,

46 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

“(2) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Agriculture.

“(4) STATE.—The term ‘State’ means—

“(A) a State;

“(B) the District of Columbia;

“(C) the Commonwealth of Puerto Rico; and

“(D) any other territory or possession of the United States.

“(5) STATE DEPARTMENT OF AGRICULTURE.—The term ‘State department of agriculture’ means the agency, commission, or department of a State government responsible for agriculture in the State.

“(6) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the governing body of an Indian tribe.

“SEC. 297B. STATE AND TRIBAL PLANS.

“(a) SUBMISSION.—

“(1) IN GENERAL.—A State or Indian tribe 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, 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 as described in paragraph (2).

“(2) CONTENTS.—A State or Tribal plan referred to in paragraph (1)—

“(A) shall only be required to include—

“(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

“(ii) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(iii) a procedure for the effective disposal of—

“(I) plants, whether growing or not, that are produced in violation of this subtitle; and

“(II) products derived from those plants;

“(iv) a procedure to comply with the enforcement procedures under subsection (e);

“(v) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;

“(vi) a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received; and

“(vii) a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi); and

“(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.

“(3) RELATION TO STATE AND TRIBAL LAW.—

“(A) NO PREEMPTION.—Nothing in this subsection 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 subtitle.

“(B) REFERENCES IN PLANS.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

“(b) APPROVAL.—

“(1) IN GENERAL.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

“(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or

“(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).

48 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(2) AMENDED PLANS.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, 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, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).

“(3) CONSULTATION.—The Secretary shall consult with the Attorney General in carrying out this subsection.

“(c) AUDIT OF STATE COMPLIANCE.—

“(1) IN GENERAL.—The Secretary may conduct an audit of the compliance of a State or Indian tribe with a State or Tribal plan approved under subsection (b).

“(2) NONCOMPLIANCE.—If the Secretary determines under an audit conducted under paragraph (1) that a State or Indian tribe is not materially in compliance with a State or Tribal plan—

“(A) the Secretary shall collaborate with the State or Indian tribe to develop a corrective action plan in the case of a first instance of noncompliance; and

“(B) the Secretary may revoke approval of the State or Tribal plan in the case of a second or subsequent instance of noncompliance.

“(d) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).

“(e) VIOLATIONS.—

“(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

“(2) NEGLIGENT VIOLATION.—

“(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

“(i) failing to provide a legal description of land on which the producer produces hemp;

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

“(iii) producing *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—

“(i) a reasonable date by which the hemp producer shall correct the negligent violation; and

“(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.

“(C) RESULT OF NEGLIGENT VIOLATION.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 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.

“(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

“(3) OTHER VIOLATIONS.—

“(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—

“(i) the State department of agriculture or Tribal government, as applicable, shall immediately report the hemp producer to—

“(I) the Attorney General; and

“(II) the chief law enforcement officer of the State or Indian tribe, as applicable; and

“(ii) paragraph (1) of this subsection shall not apply to the violation.

“(B) FELONY.—

“(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

be ineligible, during the 10-year period following the date of the conviction—

“(I) to participate in the program established under this section or section 297C; and

“(II) to produce hemp under any regulations or guidelines issued under section 297D(a).

“(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.

“(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section shall be ineligible to participate in that program.

“(f) EFFECT.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—

“(1) for which a State or Tribal plan is not approved under this section, if the production of hemp is in accordance with section 297C or other Federal laws (including regulations); and

“(2) if the production of hemp is not otherwise prohibited by the State or Indian tribe.

“SEC. 297C. DEPARTMENT OF AGRICULTURE.

“(a) DEPARTMENT OF AGRICULTURE PLAN.—

“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian tribe shall be subject to a plan established by the Secretary to monitor and regulate that production in accordance with paragraph (2).

“(2) CONTENT.—A plan established by the Secretary under paragraph (1) shall include—

“(A) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(B) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

“(C) a procedure for the effective disposal of—

“(i) plants, whether growing or not, that are produced in violation of this subtitle; and

“(ii) products derived from those plants;

“(D) a procedure to comply with the enforcement procedures under subsection (c)(2);

“(E) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle; and

“(F) such other practices or procedures as the Secretary considers to be appropriate, to the extent that the practice or procedure is consistent with this subtitle.

“(b) LICENSING.—The Secretary shall establish a procedure to issue licenses to hemp producers in accordance with a plan established under subsection (a).

“(c) VIOLATIONS.—

“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the territory of that Indian tribe without a license issued by the Secretary under subsection (b).

“(2) NEGLIGENT AND OTHER VIOLATIONS.—A violation of a plan established under subsection (a) shall be subject to enforcement in accordance with paragraphs (2) and (3) of section 297B(e), except that the Secretary shall carry out that enforcement instead of a State department of agriculture or Tribal government.

“(3) REPORTING TO ATTORNEY GENERAL.—In the case of a State or Indian tribe covered by paragraph (1), the Secretary shall report the production of hemp without a license issued by the Secretary under subsection (b) to the Attorney General.

“(d) INFORMATION SHARING FOR LAW ENFORCEMENT.—

“(1) IN GENERAL.—The Secretary shall—

“(A) collect the information described in paragraph (2); and

“(B) make the information collected under subparagraph (A) accessible in real time to Federal, State, territorial, and local law enforcement.



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(2) CONTENT.—The information collected by the Secretary under paragraph (1) shall include—

“(A) contact information for each hemp producer in a State or the territory of an Indian tribe for which—

“(i) a State or Tribal plan is approved under section 297B(b); or

“(ii) a plan is established by the Secretary under this section;

“(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and

“(C) for each hemp producer described in subparagraph (A)—

“(i) the status of—

“(I) a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

“(II) a license from the Secretary; and

“(ii) any changes to the status.

“SEC. 297D. REGULATIONS AND GUIDELINES; EFFECT ON OTHER LAW.

“(a) PROMULGATION OF REGULATIONS AND GUIDELINES; REPORT.—

“(1) REGULATIONS AND GUIDELINES.—

“(A) IN GENERAL.—The Secretary shall promulgate regulations and guidelines to implement this subtitle as expeditiously as practicable.

“(B) CONSULTATION WITH ATTORNEY GENERAL.—The Secretary shall consult with the Attorney General on the promulgation of regulations and guidelines under subparagraph (A).

“(2) REPORT.—The Secretary shall annually submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing updates on the implementation of this subtitle.

“(b) AUTHORITY.—Subject to subsection (c)(3)(B), the Secretary shall have sole authority to promulgate Federal regulations and guidelines that relate to the production of hemp, including Federal regulations and guidelines that relate to the implementation of sections 297B and 297C.

“(c) EFFECT ON OTHER LAW.—Nothing in this subtitle shall affect or modify—

“(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

“(2) section 351 of the Public Health Service Act (42 U.S.C. 262); or

“(3) the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services—



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“(A) under—

“(i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

“(ii) section 351 of the Public Health Service Act (42 U.S.C. 262); or

“(B) to promulgate Federal regulations and guidelines that relate to the production of hemp under the Act described in subparagraph (A)(i) or the section described in subparagraph (A)(ii).

“SEC. 297E. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated such sums as are necessary to carry out this subtitle.”.

SEC. 10114. INTERSTATE COMMERCE.

(a) **RULE OF CONSTRUCTION.**—Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products.

(b) **TRANSPORTATION OF HEMP AND HEMP PRODUCTS.**—No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.

SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT.

“(a) **IN GENERAL.**—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended—

“(1) by striking “(16) The” and inserting “(16)(A) Subject to subparagraph (B), the”;

“(2) by striking “Such term does not include the” and inserting the following:

“(B) The term ‘marihuana’ does not include—

“(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

“(ii) the”.

(b) **TETRAHYDROCANNABINOL.**—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)(17) by inserting after



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

“Tetrahydrocannabinols” the following: “, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)”.

IV. TRIBAL CODE COMMENTARY

As discussed earlier, a Tribe or State must submit a proposed hemp regulatory plan for USDA approval to regulate hemp production in within its jurisdiction in accordance with the 2018 Farm Bill. The USDA then has 60-days from receipt to either approve or deny the submitted plan. Once approved, a Tribe or State can fully exercise this new authority.

The Tribal Code excerpts above from the Blackfeet Nation and the Seneca Nation of Indians show varying approaches regarding how each tribe regulates hemp production in accordance with its own tribal law, the Interim Final Rule, and the 2018 Farm Bill requirements.

The federal requirements for approval of a tribal hemp plan are minimum thresholds and cannot be altered by tribal law. However, tribal law may require more stringent or additional criteria for on-reservation industrial hemp production. Additionally, there is flexibility in the method by which a tribal government may regulate hemp production on its reservation. One example of this approach concerns seed certification: Federal law explicitly does not endorse or require a seed certification or sourcing process for industrial hemp, but tribal regulatory structures similar to those of the Blackfeet Nation and the Oglala Sioux impose such requirements in their approved plans. Another example of flexibility is around enforcement of tribal regulations. Some tribal governments, such as the Otoe-Missouria Tribe of Indians and the Seneca Nation of Indians, have appointed special commissions to enforce their approved hemp regulatory plans. The Blackfeet Nation, on the other hand, charges enforcement of its hemp plan to its existing Blackfeet Homeland Security Department and requires this entity to consult and coordinate with the Blackfeet Tribal Business Council in issuing hemp grower licenses. In sum, there is a great degree of flexibility in how a tribal government may regulate hemp production within its jurisdiction so long as such regulation does not conflict with, or attempt to lower, federal law. One can compare approaches in tribal regulation by viewing copies of all USDA-approved tribal hemp plans at: <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>.

Nothing in the Model Code encourages or sanctions growth of industrial hemp on tribal lands for any use—research or commercial—in a manner not authorized by the 2018 Farm Bill or current

55 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



UNIVERSITY OF
ARKANSAS

*Indigenous Food and
Agriculture Initiative*

*Empowering Indian Country through
economic development and greater food access*

USDA guidance. To do otherwise would potentially jeopardize tribal sovereignty and put tribal members at risk of criminal penalties. Therefore, it is advised that the end user verify current USDA regulations and monitor ongoing developments in federal law in this rapidly changing policy area.

V. MODEL CODE LANGUAGE

TITLE ___ [INSERT NO.] FOOD AND AGRICULTURE CHAPTER 17. ALTERNATIVE AGRICULTURAL PRODUCTION

A. Industrial Hemp

i. Definitions

- a. **Acceptable Hemp THC Level** - when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and with a measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of this Chapter 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- 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 range from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of ‘acceptable hemp THC level’ affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the Controlled Substances Act.
- b. **AMS** - the U.S. Department of Agriculture (“USDA”) Agricultural Marketing Service.
- c. **Applicant** – the individual person or entity applying for a hemp license from the Tribe under this Code.

56 – Industrial Hemp (Updated 6.3.2020)

This document is strictly for educational purposes only and does not constitute legal advice nor create an attorney/client relationship



- d. **BIA** – the Bureau of Indian Affairs
- e. **Cannabis** – any form of the plant in the genus Cannabis in which the THC concentration on a dry weight basis has not yet been determined.
- f. **Conviction** – 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. 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 the purposes of this part.
- g. **Corrective Action Plan** – the plan set forth by the Department to correct a negligent violation in accordance with this Code.
- h. **Criminal History Report** – the Federal Bureau of Investigation’s Identity History Summary.
- i. **CSA** – the Controlled Substances Act as codified at 21 U.S.C. 801 et seq.
- j. **Culpable Mental State Greater than Negligence** - to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.
- k. **DEA** – the U.S. Drug Enforcement Agency
- l. **Department** – the tribal agency, commission, or department responsible for the oversight and implementation of this hemp code as assigned by the ‘tribal government.’
- m. **Dry Weight Basis**
- n. **Entity** – all legal entities, including but not limited to corporations, foundations, organizations, business trusts, estates, limited liability companies, partnerships, limited liability partnerships, associations, or any other form of business entity (regardless of jurisdiction of formation) as well as tribal, federal, state, local or international governmental entities. Tribal entities include all agencies, offices, enterprises, corporations, and political subdivisions, such as Community governments of the Tribe.
- o. **FSA** – the USDA Farm Service Agency



- p. **Geospatial Location** – a location designated through a global system of navigational satellites used to determine the precise position of a place or object.
- q. **Hemp** – The term ‘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 delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis within the Acceptable Hemp THC Level.
- r. **Key Participant** – a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation, limited liability company or any other corporate entity. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.
- s. **License** – authorization from the Tribe or Department to grow hemp within the Tribal Jurisdiction.
- t. **Licensee** – a recipient of a valid License
- u. **Lot** – contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, “lot” is to be defined by the producer in terms of farm location, field acreage, and variety (i.e., cultivar) and to be reported as such to the FSA.
- v. **Marihuana or Marijuana** – all cannabis that tests as having a THC concentration above the Acceptable Hemp THC Level.
- w. **Negligence** – failure to exercise the level of care that a reasonably prudent person would exercise in complying with regulations set forth in this Code.
- x. **Person** – All natural persons or entities.
- y. **Plant**
- z. **Reverse Distributor** – a person who is registered with the DEA to dispose of marijuana under the CSA.
- aa. **Secretary** – the U.S. Secretary of Agriculture
- bb. **Tribe** – the [Tribe]



- cc. **Tribal Jurisdiction** – The Tribe’s jurisdiction as determined by 18 U.S.C 1151 in the definition of “Indian Country.”
- dd. **USDA** – the U.S. Department of Agriculture
- ii. **Regulation of Industrial Hemp**
 - a. Subject to the provisions under this subsection, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp within tribal jurisdictional boundaries to the greatest extent allowed under federal law.
 - b. Industrial Hemp is considered an agricultural product that is subject to regulation by [Tribe].
 - c. The Department shall have the authority to create rules pursuant to the provisions of this subchapter regulating the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession of, selling, importing, and exporting industrial hemp within tribal jurisdictional boundaries, to the greatest extent allowed under federal law.
 - d. This Plan is consistent with applicable Tribal and federal law. Nothing in this Plan shall be construed as a waiver of the Tribe’s sovereign immunity. Adoption of the regulations in this Plan does not prohibit the Tribe from adopting additional regulations consistent with or more stringent than these regulations.
- iii. **Hemp Producer Licensing**
 - a. To the extent allowed under federal law, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import or export industrial hemp within jurisdictional boundaries of the Tribe after obtaining a License from the Department. To be valid, any license shall be unexpired, unsuspended, and unrevoked.
 - b. Applicants may submit a signed, complete, accurate, and legible application for a new or renewed License from the Department between January 1st and December 31st 2020. In subsequent years, applicants may submit an application for a new license or renewal of an existing to the Department from August 1st through December 31st of each year. The application shall include:
 - i. Contact Information
 - (1) For an individual Applicant, the application must include full name, business address, telephone number and business address.
 - (2) For an entity Applicant, the application must include the full name of the entity, the principal business location address, and



- the full name, title EIN number and email address of each Key Participant of the Entity.
- ii. A legal description or street address of the land on which each Lot Hemp will be produced. To the extent practicable, a geospatial location shall be included.
 - iii. Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of Hemp.
 - iv. A complete application must include a current Criminal History Report for the Applicant. If the Applicant is an Entity, a Criminal History Report shall be provided for each Key Participant. All Criminal History Reports must be dated within sixty (60) days of the Application submission date.
 - v. Application fee of \$ _____
- c. Licenses shall be valid until December 31 of the calendar year three (3) years after the License was issued, unless otherwise extended or revoked by the Department. Hemp Licenses must be renewed prior to expiration and are not renewable, transferrable, alienable, or otherwise capable of being disposed of by the Licensee. The same criteria for initial License applications and renewals shall apply under this Code.
 - d. A License modification is required if there is any change to the information submitted by the Applicant, including but not limited to: sale of a business; the production, handling, or storage of hemp in a new location; or a change in the key participants producing under a License.
 - e. Any Person convicted of a felony relating to a controlled substance within any jurisdiction of the United States of America before, on, or after the date of the enactment of this Plan shall be ineligible, during the ten (10) year period following the date of the conviction to participate under this Plan and produce hemp under this Plan, unless that person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose felony conviction occurred before December 20, 2018.
 - f. If Licensees are Entities, then only Key participants shall be subject to the felony conviction requirements described herein if they participate in the business operations of Licensee.
 - g. The Department may revoke an approved License at any time for any grower, handler, or agricultural hemp seed producer if such person violates:
 - i. A provision of this subsection;
 - ii. Falsifying information in an Application or any communication with the Department;



- iii. A rule promulgated by the Department in furtherance of this subsection; or
- iv. Any law or Department rule related to agricultural activities other than industrial hemp operations.
- h. The Department may promulgate rules pursuant to the provisions of this subsection to appropriately carry out the provisions herein.
- i. Each Producer shall be issued a License identifier in a format consistent with that prescribed by the USDA.
- j. No License is required by any Person within the Tribe's jurisdictional boundaries for the personal possession/personal use of Hemp or Hemp products.
- k. Applicants must have legal authority to grant access to the land or premises for inspection and sampling.
- l. The Tribe may impose and enforce a tax upon the selling of Hemp and Hemp products upon all Licensees.
- iv. **Sampling, Testing, and Harvest of Hemp**
 - a. **Sampling**
 - i. Within fifteen (15) days prior to the anticipated harvest of cannabis plants, a Federal or Tribal law enforcement agency or other Federal or Tribal designated person shall collect samples from the flower material of such cannabis plants for Delta-9 Tetrahydrocannabinol Concentration level testing.
 - ii. The method used for sampling from the flower material of the cannabis must be sufficient at a confidence level of ninety-five (95%) that no more than one percent (1%) of the plants in the Lot would exceed the Acceptable Hemp THC Level.
 - iii. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the Lot.
 - iv. Upon conclusion of sampling, the approved sampling official shall transport the sample to a DEA-registered testing laboratory.
 - v. During the scheduled sample collection, the Licensee or an authorized representative of the Licensee shall be required to be present at the growing site.
 - vi. Representatives of the sampling agency shall be provided with complete and unfettered access during business hours to all hemp and other cannabis plants, whether growing or harvested, on 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's License.

- vii. The Licensee shall not harvest the cannabis crop prior to samples being taken.

b. Testing

- i. The Department is responsible for implementing these policies and procedures for effectively testing the delta-9 tetrahydrocannabinol concentration levels of hemp produced on or sold from the territory, using post-decarboxylation or other similarly reliable methods. For purposes of testing policies and procedures, the Department shall adopt and utilize the USDA Testing Guidelines for Identifying Delta-9 Tetrahydrocannabinol Concentration in Hemp, as may be amended from time to time. The Department may choose to contract for such collection and testing services. As USDA and accepted scientific standards will evolve, testing procedures may too. Testing of hemp must also meet the following requirements:

- a. Licensee shall not remove a Lot that has not been sampled and tested for compliance in accordance with Department procedures.
- b. Throughout the sampling and testing process, hemp plant materials from one lot cannot be commingled with hemp plant material from other lots.
- c. Compliance and safety testing for Hemp and Hemp Products required by these rules shall be conducted by DEA-registered laboratories or another accreditation standard approved by the USDA. Any such lab shall:
 - (1) comply with 7 CFR 990.3(a)(3)(iii);
 - (2) use a validated testing methodology that uses postdecarboxylation or other similarly reliable method;
 - (3) use a procedure for testing that is able to accurately identify whether a sample contains delta-9 THC content levels above the Acceptable Hemp THC Level;
 - (4) use a method to consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC;



- (5) use a measurement of total available THC derived from the sum of the THC and THC- A content (and may use gas or liquid chromatography with detection);
 - d. In determining the results of the testing, the THC concentration level must be determined and reported on a dry weight basis.
 - e. Any test of a representative sample that exceeds the Acceptable Hemp THC Level shall be conclusive evidence that the lot represented by the sample is marijuana, which must be disposed in accordance with Section (A)(v) herein.
 - f. Samples that exceed the Acceptable Hemp THC Level, or which are not certified by a DEA-registered laboratory at or below the Acceptable Hemp THC Level cannot be further handled, processed, or enter commerce, and the producer must dispose of the Lot, in accordance with the Controlled Substance Act and DEA regulations.
 - g. Each Licensee will work with the DEA-registered laboratory that conducts the test of sample(s) of Hemp crop collected in accordance with this Section from the Licensee's lot(s) to ensure that the test results for all such sample(s) include information required under 7 C.F.R. § 990.70(d) and are reported to USDA.
 - h. Laboratories must have an effective disposal procedure for cannabis crops that are tested that do not meet the requirements of this Code. The procedure must be in accordance with CSA and DEA regulations, as may be updated from time-to-time.
 - i. Each Licensee must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports the test results from all samples tested to the Department and USDA.
- c. **Harvesting**
- i. Licensee shall harvest the crop not more than fifteen (15) days following the date of sample collection.
 - ii. If Licensee fails to harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the Lot shall be required to be submitted for testing.



- iii. Harvested Lots of Hemp plants shall not be commingled with other harvested Lots or other material without prior written permission from USDA.
 - iv. Lots that meet the Acceptable Hemp THC Level may enter into the stream of commerce.
 - v. At the Licensee's expense, any Licensee may request additional testing if it is believed that the original Delta-9 Tetrahydrocannabinol Concentration level test results were in error.
- v. **Destruction of Non-Compliant Plants**
- a. Cannabis plants that test higher than the Acceptable Hemp THC Level shall constitute marijuana, a schedule I controlled substance under the CSA and must be disposed of by Licensee in compliance with this Section and subsequent regulations, including disposal regulations under the CSA, and DEA regulations, including 21 C.F.R. 1317.15, 1317.90, and 1317.95.
 - b. A Hemp Disposal Report must be submitted to the Department no later than fifteen (15) days after the date of completion of the disposal.
 - c. All plants and materials produced at the same Lot as the Hemp that tests higher than the Acceptable THC Level shall be promptly disposed of by Licensee.
 - d. The plant and materials must be collected by and disposed of a person authorized under the CSA to handle marijuana, such as a duly authorized tribal law enforcement officer. The plant and materials must be disposed of in accordance with the CSA and DEA regulations.
 - e. The Licensee shall provide any and all evidence requested to verify disposal and complete a Disposal Record.
 - f. The Department must promptly:
 - i. Notify the AMS Administrator of any occurrence of plant material that did not meet definition of hemp under the regulations; and
 - ii. attach disposal records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.
 - g. The Department is authorized to set a schedule of civil fines for non-compliance.
- vi. **Inspections**
- a. The Department shall have authority to conduct random inspections of Licensees and all Lots to verify compliance with all requirements of the License issued and shall conduct such inspections at least annually.



- b. Inspections may be conducted at any time during normal business hours, with or without notice to the Licensee. The Department shall be granted unrestricted access to the Lots.
 - c. Inspections may include sampling by Department inspectors for testing to determine Hemp THC levels or any other Department defined purpose.
 - d. The provisions set forth in Section VII shall apply to any Licensee found to be in violation of these requirements following any such inspection.
- vii. Information Sharing, Retention and Maintenance**
- a. On the first of each month, the Department shall submit to the USDA a report, in the format compatible with USDA's information sharing system, containing the following:
 - i. The time period covered by the report;
 - ii. If applicable, the indication that there were no changes during the time period;
 - iii. Contact information for each Licensee
 - a. If an individual then full name, license identifier, business address, telephone number, and email address;
 - b. If an Entity, then the full name of the Entity, principal business location address, employer identification number (EIN), license identifier, and full name, title, phone number and email each employee and investor who must submit a Criminal History Report, including Key Participants.
 - iv. Legal description of each Licensee's land, including to the extent practicable geospatial location;
 - v. The acreage, or indoor square footage for each Licensee;
 - vi. The License number for each Licensee;
 - vii. The status or status change; and number of each Licensee, including previously reported information and new information;
 - viii. If there have been any disposals that month, the report must also include:
 - a. Name and address of the Licensee
 - b. Licensee's License number
 - c. Location information (such as lot number, location type, and if practicable geospatial location);
 - d. Information on the agent who handled the disposal;
 - e. Disposal completion date; and
 - f. Total acreage disposed.



- b. Annually, by December 15 of each year, the Department shall report, in the format compatible with USDA's information sharing system, to the USDA the following:
 - i. Total planted acreage;
 - ii. Total harvested acreage; and
 - iii. Total acreage disposed.
 - c. The Producer shall be responsible for providing certain to the Department and the FSA. Within 30 days of receipt, the Department shall provide this same information to the Secretary in a format compatible with USDA's information sharing system. Such required information shall include:
 - i. Street address, and to the extent practicable, geospatial location, for each Lot or indoor growing facility where Licensee grows Hemp;
 - ii. Acreage, or indoor square footage dedicated to Hemp production; and
 - iii. Licensee's number as stated on the License issued by the Department.
 - d. The Department shall maintain all information for Hemp Licenses, License applications, and other relevant information regarding land where Hemp is produced, including a legal description of the land, for a period of not less than three (3) calendar years.
- viii. Violations of this Plan**
- a. Violations of this Code shall be subject to enforcement in accordance with this Section
 - b. Negligent Violation
 - i. A Licensee shall be subject to enforcement for negligently:
 - a. Failing to provide a legal description of land on which Licensee cultivates Hemp;
 - b. Failing to obtain a license or other required authorization from the Department as applicable; or
 - c. Producing *Cannabis sativa* L. with a THC concentration of more than the Acceptable Hemp THC Level, unless the Licensee made a reasonable attempt to grow Hemp and the THC level did not exceed 0.5 percent on a dry weight basis.
 - ii. For each negligent violation committed by a Licensee, the Department shall require a corrective action plan for the Licensee to cure the negligent violation. The Licensee shall comply with the corrective action plan required by the Department. At a minimum the Department shall require the corrective action plan to be in place for two (2) years. Until the corrective action plan is terminated, a Licensee shall be



subject to random inspections by the Department to determine if corrective action has been implemented by the Licensee. The Department's corrective action plans shall:

- a. Provide a date by which the Licensee shall correct the negligent violation;
 - b. Include steps required by the Department to correct the negligent violation; and
 - c. Require the Licensee to provide a description of procedures to the Department to demonstrate compliance with the required corrective action plan.
- iii.** A Licensee that negligently violates this Code according to Section VIII(B)(i) 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.
- iv.** If a Licensee commits a subsequent violation while the corrective action plan is in place, the Commission shall require the Licensee to maintain a heightened level of quality control, require staff training and take quantifiable action measures.
- v.** A Licensee that negligently violates this Plan according to Section VIII(B)(i) three (3) times in a five (5)-year period shall be ineligible to produce Hemp within the territory of the Tribe for a period of five (5) years beginning on the date of the third violation.
- c.** Culpable mental state greater than negligence
- i.** If the Commission determines that a Licensee has violated this Plan with a culpable mental state greater than negligence, the Commission shall immediately report the Licensee to:
 - a. The U.S. Attorney General; and
 - b. The Tribal Law Enforcement Agency.
 - ii.** Paragraphs (B)(i) and (B)(ii) shall not apply to violations where the culpable mental state is greater than negligence.
- ix. Transportation**
- a.** The Licensee or other Person responsible for the transportation of hemp, or hemp products, must ensure the following documentation accompanies the hemp at all times during transport:
 - i.** A certified copy of the Tribal license, and the Bill of Lading, that corresponds to the land or processing from which the hemp or hemp product originated;
 - ii.** A copy of the certified Batch testing results that corresponds to the land or processing from which the Hemp or Hemp Product



- iii. originated;
- iii. Destination information;
- iv. Any other documentation that may be required by the Hemp Commission.
- b. The 2018 Farm Bill, P.L. 115-334, Sec. 10112, and accompanying committee report language, explicitly prohibits state and tribal governments from interfering with the interstate transportation of hemp and hemp products. The Tribe shall provide reciprocity to other state and tribal licenses and testing certifications for hemp and hemp products being transported through the Tribe's jurisdiction. Any Person who possesses hemp or hemp products which are not simply being transported through Tribal jurisdiction and which will remain within the Tribal jurisdiction are subject to the requirements in this code.
- x. **Miscellaneous Provisions**
 - a. In order to operate within the Tribe's jurisdiction. all Licensees must also obtain a business license subject to [citation to Tribal Business Code]
 - b. Any information provided to the Department, or designee, may be provided to the USDA and law enforcement without further notice to Licensee
 - c. Agricultural leases under the American Indian Agricultural Resource Management Act of 1993 (25 U.S.C. 3701 et seq.) and BIA agricultural lease regulations (25 CFR Part 162) in the Tribe's jurisdiction for the production of Hemp shall include provisions to implement and enforce this Code and shall not include provisions which are in conflict with this code.
- xi. **Industrial Hemp—No Criminal Penalty**
 - a. [Tribal Criminal Code] provision [citation to marijuana criminal statute] is hereby amended to provide that products meeting the definition of industrial hemp under this chapter shall not be considered marijuana products subject to criminal penalties under any relevant tribal criminal law regulating marijuana possession, sale, or use within tribal boundaries.

VI. STATE LAW EXAMPLES

As of this writing, at least 47 states have enacted legislation related to hemp cultivation and production. A complete list of state approved hemp plans is available on the USDA website at <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>.