

Prairie Band Potawatomi Nation  
United State Department of Agriculture  
Tribal Hemp Plan  
December 19, 2019

The Prairie Band Potawatomi Nation is a Federally recognized Indian Tribe. The Farm Bill of 2018, Section 297 A, identifies an Indian Tribe by the meaning given in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 5304). The Prairie Band Potawatomi Nation meets the definition of an Indian Tribe eligible to participate in the production of Hemp as defined in the Farm Bill of 2018. The Prairie Band Potawatomi Nation desires to have primary regulatory authority over the production of Hemp in the territory of the Tribe. The plan has been drafted by the Tribe to assert Tribal sovereignty and to regulate Hemp as an agriculture commodity in compliance with federal and Tribal laws. The Prairie Band Potawatomi Nation has signed a resolution authorizing this plan to be submitted to the United States Department of Agriculture (USDA).

The Prairie Band Potawatomi Nation Administrative offices are located on the Prairie Band Potawatomi Nation Reservation in Mayetta, Kansas. All Hemp growers, processors, handlers, applicants and agents within the jurisdiction of the Nation are bound to all Prairie Band Potawatomi Nation Tribal laws, including ordinances, codes, policies and procedures. By receiving approval of the Nation to commence activity for any Hemp related business, the applicant submits to the jurisdiction of the Prairie Band Potawatomi Nation.

Plan requirements as outlined in SEC. 297B, Line 18, (2) Contents:

- A. Maintain relevant information regarding land on which Hemp is produced in territory of the Indian Tribe, including legal description of the land for a period of not less than 3 years.
- B. Adhere to a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of Hemp produced in the territory of the Indian tribe;
- C. Adhere to a procedure for the effective disposal of products that are produced in violation of this subtitle;
- D. Adhere to a procedure to comply with the enforcement procedures under subsection
- E. Any other practice or procedure

Definitions. The Prairie Band Potawatomi Nation Tribal Hemp Plan applies the following definitions:

“Acceptable THC Level” means when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the

measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” affects neither the statutory definition of hemp, 7 U.S.C. § 1639o (1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. § 802(16), in the CSA.

“Applicant” means a Person or Tribal entity who submits an application to participate in the Prairie Band Potawatomi Nation Tribal Hemp Program.

“Application” means a formal request to the Tribe to plant Hemp.

“Cannabis” means a genus of flowering plants in the family Cannabaceae.

“CSA” means Controlled Substances Act.

“Culpable Mental State greater than negligence” means to act intentionally, knowingly, willfully, or recklessly.

“Cultivate” means to plant, water, grow, or harvest a plant or crop.

“DEA” means Drug Enforcement Agency.

“FSA” means the Farm Service Agency.

“GPS” means Global Positioning System.

“Grow site” has the same meaning as “registered land area” as that term is defined in this section.

“Hemp grower” means a Person licensed by the Prairie Band Potawatomi Nation to cultivate Hemp within the territory of the Tribe.

“Hemp” means all parts and varieties of the plant *Cannabis sativa* L. containing no greater than 0.3% tetrahydrocannabinol on a dry weight basis.

“Licensee” has the same meaning as “Hemp grower” as that term is defined in this section.

“Lot” refers to a 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.

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

“Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the rules set forth under the Tribal Hemp Plan.

“Non- Retrievable” means the process utilized to render a substance “non-retrievable” shall permanently alter the substance’s physical or chemical condition or state through irreversible means and thereby render the substance unavailable and unusable for all practical purposes. A substance is considered “non-retrievable” when it cannot be transformed to a physical or chemical condition or state as a controlled substance or controlled substance analogue.

“Person” means a natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, as well as a tribal, state or local government entity.

“Process” means to convert any portion of a Hemp crop into a Hemp ingredient, Hemp product, or other marketable form.

“Reservation” means all territory within the exterior boundaries of the area recognized as the Prairie Band Potawatomi Nation’s Reservation and all other territory (1) which is or in the future may be located outside of said boundaries, and (2) to which it is possible to extend the Nation’s jurisdiction or authority, including, without limitation, territory within the exterior boundaries of Indian country of the Nation or of its members and all property held by the United States in trust for the Nation or for a member of the Nation.

“Registered land area” means a contiguous lot, parcel, or tract of land registered with the Prairie Band Potawatomi Nation on which a licensee may cultivate Hemp. A registered land area may include land and buildings that are not used to cultivate Hemp.

“THC” means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post-

decarboxylation.

“Tribal Member” means an enrolled member of the Prairie Band Potawatomi Nation

### **Tribal Plan Section A: Maintain Relevant Producer and Land Information**

The Prairie Band Potawatomi Nation Tribal Hemp Production Plan will outline the issuance of licenses to those who meet all requirements as set forth in this plan. The Tribe will collect, maintain and provide the USDA with contact information of each license holder. The Tribe will ensure the annual crop report is submitted to FSA for each of its license holders. The Tribe will maintain and report to USDA the status of licensed producers and any changes to the application package of the license holders.

Persons allowed to submit applications are only:

1. Persons age 18 and over and Tribal entities
2. Applicants with no felony convictions relating to controlled substances within past 10 years.

Any Persons growing Hemp for commercial purposes is required to apply to the Prairie Band Potawatomi Nation for a license and must submit all required forms in the Tribal License Application Packet.

The application will include: Legal Name / Address / Telephone Number / Email Address / Current registered legal description of land area where Hemp will be produced, GPS location, or other land identifier used by Tribe.

The Tribe has established the following general requirements:

1. Full Application must be submitted with payment made for Tribal license processing fee
2. First time applicants are required to be fingerprinted and background check ran for statewide and nationwide criminal history check.
3. A license is good for up to 5 years and licensees will have to be in compliance with the Tribal Hemp Plan in order to be eligible to renew for another license term.
4. Licenses are non-transferable and not permitted for re-sale.
5. Licensees will report crop acreage to FSA with the corresponding license number included.
6. The Prairie Band Potawatomi Nation will retain for no less than three years all the information submitted as part of the Application Package.

### **Tribal Plan Section B: Procedure for accurate and effective Sampling and Testing for THC**

#### Testing

The Prairie Band Potawatomi Nation will use a lab registered with the DEA, as required by USDA to perform the specimen testing for measurement of tetrahydrocannabinol (THC). The testing will be done within 15 days prior to anticipated harvest date. The Tribal Hemp Plan outlines the procedures the Tribe will take to provide an approved lab with samples. The validity of the lab will be ensured because it is a DEA registered lab and meets the requirements to be testing for THC levels. The lab used will report the test data in accordance with 7 CFR Part 990. The lab will use the USDA Laboratory Test Results Report to submit data to USDA.

1. The grower of Hemp that does not test compliant for THC concentration as directed in the Prairie Band Potawatomi Nation Tribal Hemp Plan will adhere to the guidance for negligent violations, corrective action plans and/or disposal.
2. The testing method for THC concentration will use:
  - a. Measurement of THC and THCA and the consideration of conversion of THCA into THC and report on a dry weight basis
  - b. HPLC is the chromatography testing method we have selected.
3. Any DEA registered lab must meet the AOAC International Standard Method Performance Requirements (SMPR) for selecting the methods used for testing.
4. The DEA registered lab will identify the uncertainty of accuracy, repeatability and reproducibility for each validated method. The lab will use the measurement uncertainty to determine the confidence interval around the THC threshold level of 0.3%. The measurement uncertainty and the % of THC in each test will be reported on the USDA Laboratory Test Results Page.

The Lab will issue a laboratory test results report for each sample. The laboratory test report shall include the:

- (1) Laboratory Name / City / State / DEA Registration #
- (2) Producer ID
- (3) Producer name / Street / City / State
- (4) Sample Lot ID
- (5) Testing Date
- (6) Results Reported Date
- (7) Test: Initial or Re-test
- (8) Result % THC
- 9) Measurement uncertainty
- (10) Pass or Fail

### Sampling

The Tribe has established the following general guidelines to comply with sampling for the identification of Delta-9 Tetrahydrocannabinol concentration in a “lot” of Hemp crop acreage. The sampler will collect individual specimens of plants in order to obtain a

representative sample of Hemp in the designated lot. Licensees must not harvest prior to the Hemp being sampled and tested for THC concentration. The Tribal designated sampler will be a Tribal employee appointed and trained by the Tribe for sampling.

1. Samples will be collected by a designated Tribal employee, which is an approved sampler, upon the approval of this plan.
2. Fees for sampling will be paid by the license holder not the Tribe.
3. The license holder or an authorized representative of the license holder must be present at the growing site during sample collection.
4. The Tribe requires the authorized sampler to have complete and unrestricted access during business hours to all Hemp plants and any land or buildings used for cultivation or handling of Hemp.
5. The license holder is not authorized to harvest any of its crop prior to samples being taken and if the crop is harvested prior to sampling, will result in failure to comply with the Tribal Hemp Plan, resulting in ineligibility for renewal for 1 year.
6. All samples collected will be specifically labeled and sealed appropriately from one lot before moving to sampling the next lot. The sampler will seal each bag with the identification number. This procedure will ensure plant material from one lot will not be comingled with Hemp plant material from other lots.
7. The designated sampler will be provided with necessary equipment and supplies:
  - a. Garden shears – appropriately cleaned
  - b. Sample paper bags, made from material that is THC free
  - c. Security tape
  - d. Permanent markers
  - e. Sample Collection forms
  - f. GPS Unit
  - g. Disposable gloves - nitrile
8. The Tribal Sampling Guidelines to ensure adherence of the acceptable Hemp THC level are in accordance with the USDA guidelines:
  1. The licensee or authorized representative shall accompany the sampler throughout the sampling process.
  2. Surveillance of the growing area.
    - 2.1. The sampler shall verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.
    - 2.2. The sampler shall estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the flowering material, meaning inflorescences (flowers/buds).
    - 2.3. The sampler shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.

3. Time of Sampling:

3.1. Within 15 days prior to the anticipated harvest of Hemp plants, the sampler shall collect representative samples from such plants to be sent for THC concentration level testing.

4. Field Sampling:

4.1. For purposes of determining the number of individual plants to select for sampling, the size of the growing area shall be considered. For sampling purposes, samples from separate “lots” must be kept separate and not be comingled.

4.2. For lots of less than one 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.

4.3. For growing areas larger than ten (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 33-1999.

4.3.1. The sample size is estimated in a two-step process. The first step is to estimate the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.

4.3.2. The initial number of primary plants is estimated using where p is the confidence level to detect Hemp plants having THC content greater than the acceptable Hemp THC level and i is the proportion of Hemp plants having

$$n_o = \frac{\ln(1-p)}{\ln(1-i)}$$

THC content greater than the acceptable Hemp THC level. The values for i are based on past experience in the same or similar growing areas.

4.3.3. The initial primary plants estimate is adjusted by the number of acres to calculate the minimum number of primary plants for composting as follows:

$$n = \frac{n_o}{1 + \frac{(n_o - 1)}{N}}$$

where n is the minimum number of primary plants to be selected for forming a composite sample, no is the initial number of primary plants, and N is the number of acres under cultivation.

6. Collecting Samples from each lot:

6.1. The sampler 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.

6.2. While walking through the growing area, the sampler shall cut at least “n”

flowering material, meaning inflorescences (the flower or bud of a plant) at random but convenient distances. Avoid collecting too many specimens from the borders of the field/greenhouse.

6.3. The cut shall be made just underneath a flowering material, meaning inflorescence (the flower or bud of a plant), located at the top one-third {1/3} of the plant. (See figure below.) The sample size must be of adequate volume to accommodate laboratory tests.

6.4. Utilize a paper sample bag for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings, n, as calculated by 4.3.3, or in the Example Tables 1 and 2.

6.5. Seal each bag and record the sample number.

#### 7. Sample identification:

7.1 The sampler shall seal each bag with tamper resistant tape and record the sample identification number. The sample shall also be identified with the following information:

(1) The sample ID shall include: Sampling agent contact information; name and contact information of the producer; producer Hemp license or authorization number ; date of sample; and “lot” ID; any other information that may be required by Tribe, mail delivery services, customers or groups of customers.

#### Tribal Inspections of Hemp Growing Sites:

(a) The Tribe will conduct site visits for inspections of Hemp grown to ensure compliance with Tribal Hemp Ordinance and verify Hemp is not produced with any violations.

(b) Inspections will be completed no less than one time annually and can be completed randomly and without notice.

(c) All licensees shall grant the Tribe unrestricted access to the registered land area(s) and accompanying facilities.

#### **Tribal Plan Section C: Disposal.**

The Prairie Band Potawatomi Nation has set forth guidelines for licensees to adhere to in regards to disposal of plant material that is produced in violation of the Farm Bill of 2018. We have reviewed the Controlled Substances Act as set forth by the DEA. The following statement is directly from the Federal Register 21 CFR Parts 1317.15.

*“The DEA is not requiring a particular method of destruction, so long as the desired result is achieved. This standard is intended to allow public and private entities to develop a variety of destruction methods that are secure, convenient, and responsible, consistent with preventing the diversion of such substances. Destruction of controlled substances must also meet all other applicable Federal, State, tribal, and local laws and regulations. Once a controlled substance is rendered “nonretrievable,” it is no longer subject to the*



*requirements of the DEA regulations.”*

The Tribe has established the following disposal protocol for plants testing out of compliance after enforcement procedures are adhered to:

1. The material will be collected for disposal by Tribal Law Enforcement.
2. Licensed producers notified they have produced product exceeding the acceptable Hemp THC level will arrange for disposal of the lot represented by the sample.
3. Licensees will document the disposal of all lots that need to be disposed of. The Tribe will ensure the licensee submits the Tribal Hemp Disposal Report to USDA following the completion of the disposal process, and will include the test results.
4. Disposal will be consistent with the Federal Register 21 CFR Parts 1317.15 for rendering a controlled substance as non-retrievable.

### Collection of Information

The Tribe will collect relevant data and information needed to ensure reports are submitted to the USDA, in the appropriate manner and on time. The USDA reports will include:

Crop Acreage Report (FSA 578) to the FSA - annual  
Laboratory Tests Results Report to USDA – 30 days after the information is received  
State and Tribal Hemp Disposal Report to USDA - 30 days after the information is received  
State and Tribal Hemp Annual Report to USDA - Dec 15<sup>th</sup>.

The following information will be included:

Hemp crop acreage  
Reporting total acreage of Hemp planted, harvested, disposed  
License number  
Street address  
GPS location of lot or greenhouse where Hemp is produced  
Acreage of greenhouse or indoor square footage dedicated to the production of Hemp

Information sharing will be accomplished by submitting these reports with correct and updated information. The Tribe is aware of the real-time information sharing efforts on behalf of the USDA and Law Enforcement. The Tribe supports the industry and the need for up to date information specifically for transporting. The Tribe will share the required information on the USDA forms provided.

### **Tribal Plan Section D: Enforcement Procedures.**

The Prairie Band Potawatomi Nation has the authority through its Tribal Constitution and Tribal Sovereignty to adopt and enforce its own Tribal laws. The Tribe has the ability by Tribal law to

enforce existing and additional rules governing its Hemp production and commercialization.

The Tribal Council in its executive capacity will enforce the Tribe's regulations. The forms collected and all information entered on the forms will be used to maintain records and enforce procedures. Non-compliance with any of the established regulations will result in immediate action depending on violation and corrective action plan.

The Tribe will conduct audits of Tribal licensees and issue corrective action plans for negligent violations. Negligent violations by a producer may lead to suspension or revocation of a producer's license. The Tribe will conduct both desk audits and site visit audits. When the Tribe visits a licensee's site, the licensee must provide access to any fields, greenhouses, storage facilities or other locations where the licensee produces Hemp. The Tribe may also request records from the licensee to include production and planting data, testing results, and other information as determined by Tribe.

The Tribe requires:

- (a) Licensees must report any changes of their contact information to the Tribe in writing within 14 calendar days of the change.
- (b) *Planting Report.* Within 14 calendar days after planting any Hemp, each Licensees shall submit a planting report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of Hemp planted.
- (c) *Pre-Harvest Notification.* At least 20 calendar days prior to harvest, each Licensee shall submit a pre-harvest notification, on a form provided by the Tribe. This will initiate the sampling process. A licensee must notify the Tribe immediately of any changes in the reported harvest dates in excess of seven calendar days.
- (d) *Post-Harvest Report.* Within 14 calendar days post-harvest, each licensees shall submit a post-harvest report for plants that test within the acceptable limit, on a form provided by the Tribe. A licensee is not required to document the removal of male Hemp plants on a post-harvest report if the male Hemp plants are destroyed or utilized on the registered land area and are not transferred or sold.

#### Negligent Violations

A negligent violation of the USDA Plan includes:

- (1) Failure to provide a legal description of the land on which the Hemp is produced.
- (2) not obtaining a license before engaging in production; or
- (3) producing plants exceeding the acceptable hemp THC level.

The Prairie Band Potawatomi Nation Tribal plan will not consider Hemp licensees as committing

a negligent violation if they produce plants exceeding the acceptable Hemp THC level if they used reasonable efforts to grow Hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis.

For sampling and testing violations, the Tribe will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable Hemp THC level (or 0.5 percent if the Licensee has made reasonable efforts to grow Hemp. The Tribe considers this as one negligent violation.

When the Tribe determines that a negligent violation has occurred, the Tribe will issue a Notice of Violation. This Notice of Violation will include a corrective action plan. The Tribe will establish and review a corrective action plan with the licensee and its implementation will be verified during a future audit or site visit. The corrective action plan will include:

- 1) A reasonable date by which the producer will correct the negligent violation(s)
- 2) The licensee to semi-annually report to Tribe on its compliance with the plan for a period of not less than the next two calendar years.

A licensee who has had three negligent violations in a five-year period is ineligible to produce Hemp for a period of five years from the date of the third violation. Negligent violations are not subject to federal, state, tribal or local government criminal enforcement action. Hemp found to be produced in violation of this part, such as Hemp produced on a property not disclosed by the licensed producer would be subject to the same disposal provisions as for plants testing above the acceptable Hemp THC level. Further, if it is determined a violation was committed with a culpable mental state greater than negligence, the Tribe will report the violation to Tribal Law Enforcement.

If a Person produces Hemp without a license, this will be reported to Tribal Law Enforcement.

The Farm Bill of 2018 limited the participation of certain convicted felons in Hemp production. A person with a Tribal, State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction from the date of the conviction, of producing Hemp under the Act. An exception applies to a person who was lawfully growing Hemp under the Farm Bill of 2014 before December 20, 2018, and whose conviction also occurred before that date.

### **Tribal Plan Section E: Any other Practice or Procedure**

Assignment of Tribal license or Authorization Numbers:

B04862\_0001, B04862\_0002, B04862\_003, etc.

### Fee Schedule

(1) The Prairie Band Potawatomi Nation Tribal Council establishes the following fees for the cultivation of Hemp for commercial purposes to be submitted along with the application:

(1) Prior to cultivation, a fee per applicant shall be submitted with the application to the Tribe.

(2) A separate application is required for each non-contiguous location in which the applicant intends to grow Hemp.

(3) The license is valid for up to five years from date of issuance by the Tribe.

(2) Upon expiration of license, a renewal fee per application shall be due to the Tribe in which the licensee intends to continue to grow Hemp.

(A) If the renewal fee is not fully paid within 30 days after expiration of license, the license is forfeited.

(B) The forfeited license may be restored upon payment of any unpaid fee amount, plus a penalty of 15% of the unpaid fee amount, to the Tribe.

(C) The Tribe may waive the penalty upon receiving a signed statement from the licensee that the licensee did not cultivate Hemp during the period of nonregistration unless there is substantial evidence otherwise.

(3) Renewed Licenses are valid for up to five years from date of issuance of renewal by the Tribe.

#### Ineligible Applicants

(1) A Licensee that commits a negligent violation three times in a five-year calendar period shall be ineligible to produce Hemp for a period of five calendar years beginning on the date of the third violation; or

(2) Any person convicted of a felony relating to controlled substance under Tribal, state or federal law in the 10-year calendar period prior to the application date shall be ineligible to produce Hemp under the Prairie Band Potawatomi Nation Tribal Hemp Program; or

(3) Any person who materially falsifies any information contained in an application to participate in the Program established under this chapter shall be ineligible to produce Hemp under the Prairie Band Potawatomi Nation Tribal Hemp Program.