



OTOE • MISSOURIA TRIBE OF INDIANS

8151 HIGHWAY 177
RED ROCK, OK 74651-0348

December 27, 2019

USDA/AMS/Specialty Crops Program
Hemp Branch
470 L'Enfant Plaza S.W.
P.O. Box 23192
Washington, D.C. 20026

Dear Secretary Perdue:

The 2018 Farm Bill (the Agriculture Improvement Act of 2018) directed Indian tribes wishing to have primary regulatory oversight of the production of Hemp to submit plans to the United States Department of Agriculture ("USDA"). The purpose of this letter is to inform the USDA of the Otoe-Missouria Tribe of Indians intent to have primary regulatory production of hemp. Accordingly, attached to this letter is our plan as required by the 2018 Farm Bill.

The plan includes the details, practices and procedures that will enable hemp producers within our jurisdiction to operate according to this plan in compliance with both tribal and federal laws. Furthermore, the plan is inclusive of all requirements found a 7 CFR, Part 990, "Domestic Hemp Production."

We look forward to working with the USDA on as government-to-government basis to ensure compliance with federal law as the Otoe-Missouria Tribe of Indians regulates hemp production. Should the USDA have any comments or questions regarding the submitted plan, please direct them to Chairman John Shotton of the Otoe-Missouria Tribe of Indians at JShotton@omtribe.org.

Sincerely,

John R. Shotton
Chairman



OTOE-MISSOURIA TRIBE OF INDIANS

8151 HIGHWAY 177
RED ROCK, OK 74651-0348

RESOLUTION

OMTC# 1220150 FY - 2019

“A RESOLUTION AUTHORIZING THE OTOE-MISSOURIA TRIBE TO ADOPT AND SUBMIT TO THE SECRETARY OF AGRICULTURE THE OTOE-MISSOURIA TRIBAL HEMP REGULATORY PLAN”

NOW, THEREFORE, BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE OTOE-MISSOURIA TRIBE OF INDIANS, AND

WHEREAS, The Otoe-Missouria Tribal Council, the governing body of the Otoe-Missouria Tribe of Indians, in accordance with the Tribal Constitution, Article VIII-Powers, Section 1., duly convened to discuss, review and approve tribal business, and

WHEREAS, Federal law requires tribes wishing to have primary regulatory authority over hemp cultivation on their lands to submit to the Secretary of Agriculture, a plan conforming to the requirements set forth in the 2018 Agriculture Improvement Act (“2018 Farm Bill”); and

WHEREAS, the Tribal Council believes it is in the best interest of the Tribe for the Tribe to have primary regulatory authority over hemp cultivation within its territory; and

WHEREAS, on March 12, 2019, by OMTC# 031233 the Otoe-Missouria Tribal Council adopted the Otoe-Missouria Industrial Hemp Regulatory Ordinance (“Ordinance”); and

WHEREAS, the Tribal Council adopts the Otoe-Missouria Tribal Hemp Regulatory Plan; and

WHEREAS, the Tribal Council further authorizes Chairman Shotton to take any steps necessary to submit the Otoe-Missouria Tribal Hemp Regulatory Plan to the Secretary of Agriculture for approval; and

SO THEREFORE BE IT RESOLVED, that the Otoe-Missouria Tribal Council hereby authorizes the Commission to adopt the Otoe-Missouria Tribal Hemp Regulatory Plan; and

BE IT FURTHER RESOLVED, that the Otoe-Missouria Tribal Council hereby authorizes Chairman Shotton to take any steps necessary to submit the Otoe-Missouria Tribal Hemp Regulatory Plan to the Secretary of Agriculture.

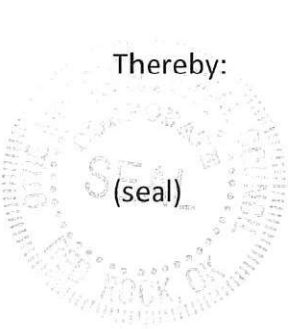
CERTIFICATION

We, the undersigned, Chairman and Secretary of the Otoe-Missouria Tribal Council, do hereby certify by signature, that the above and foregoing Resolution was given due consideration on this 20 day of December, 2019 with a quorum present and a vote of:

6 FOR, 0 AGAINST, 0 ABSENT, 0 VACANT and 1 ABSTAINING,

Thereby: APPROVING

DISAPPROVING, this Resolution



(seal)

Darrell Kihega

Darrell Kihega, Secretary

John R. Shotton
John R. Shotton, Chairman

OTOE-MISSOURIA TRIBAL HEMP REGULATORY PLAN

SECTION I. PURPOSE AND POLICY

- A. The Tribe, submits this Plan pursuant to Section 297B(a)(1) of the Agriculture Improvement Act of 2018 (the “Farm Bill”) which states that an “Indian tribe desiring to have primary regulatory authority over the production of hemp in the...territory of the Indian tribe shall submit to the Secretary, through the...Tribal government...a plan under which the...Indian tribe monitors and regulates that production as described in paragraph (2).”
- B. The Tribe desires to exercise primary regulatory authority over the production of hemp within the Tribe’s jurisdiction pursuant to Tribal law and applicable federal law.

SECTION II. DEFINITIONS

As used in this Plan, unless the context otherwise requires:

“**Acceptable Hemp 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 this hemp plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.45% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of compliance. 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.

“**AMS**” means the United States Department of Agriculture Agricultural Marketing Service.

“**Applicant**” means any Person who has applied for a License under the provisions of this Ordinance and any Licensee seeking to renew their License.

“**Business day**” means any calendar day except Saturday, Sunday, and any federal holiday.

“**Commission**” means the Otoe-Missouria Tribal Hemp Commission, created and established by the Tribal Council and charged with the implementation and enforcement of this Plan.

“**Corrective Action Plan**” means the plan set forth by the Commission to correct a negligent violation in accordance with this Plan.

“**DEA**” means the U.S. Drug Enforcement Administration.

“Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance.

“FSA” means the United States Department of Agriculture Farm Service Agency.

“Hemp” means the plant species *Cannabis sativa* L. and any part of that plant, whether growing or not, 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 three-tenths of one percent (0.3%) on a dry weight basis.

“Key Participant” is a Person or Persons who have a direct or indirect financial interest in the entity producing Hemp, such as an owner or partner in a partnership. A Key Participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include management as farm, field or shift managers.

“Ordinance” means the Otoe-Missouria Tribal Hemp Regulatory Ordinance.

“License” means the official and legal privilege and authority, granted by the Commission to a Licensee to engage in the cultivation of Hemp. A License is a revocable privilege and not a vested right.

“Licensee” means any Person licensed by the Commission to cultivate hemp.

“Person” means any individual, natural person, corporation, company, limited liability company, partnership, Indian tribe, association, or other legal entity.

“Plan” means this Otoe-Missouria Tribal Hemp Regulatory Plan.

“Plant” means all parts of the plant species *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. Such term 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.

“Lot” means 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 plan, “Lot” is to be defined by the Licensee in terms of farm location, field acreage, and variety (i.e., cultivar) and to be reported as such to the FSA.

“Secretary” means the Secretary of Agriculture.

“**Tribe**” means the Otoe-Missouria Tribe of Indians, a federally recognized sovereign nation located within the United States of America.

“**Tribal Council**” means the Otoe-Missouria Tribe of Indians’ Tribal Council, the governing body of the Tribe as described in the Tribe’s Constitution.

“**Tribal Jurisdiction**” means the Tribe and Commission’s ability to exercise authority as described in Section 4.13 of the Ordinance.

“**USDA**” means the United States Department of Agriculture.

SECTION III. COMPLIANCE WITH TRIBAL AND FEDERAL LAW

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 Commission from promulgating additional regulations consistent with or more stringent than these regulations.

SECTION IV. APPLICATIONS

- A. Any Person producing or intending to produce Hemp within the Tribal Jurisdiction shall obtain a License from the Commission. Any Person may submit an application to the Commission. The application will be used for both new Applicants and Licensees seeking renewal of their License. The application shall include:
 1. Contact Information.
 - i. Applicant that is an individual shall include full name, business address, telephone number, and email address.
 - ii. Applicant that is an entity shall include 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.
 2. Location. All Applicant’s shall provide Commission with:
 - i. street address, legal description of land and geospatial location for each Lot where Hemp will be produced. Information shall be provided for all sites if an Applicant operates in more than one location; and
 - ii. acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of Hemp.
 3. Criminal History Report. As part of a complete application, each Applicant shall provide a current Federal Bureau of Investigation’s Identity History Summary (“Criminal History Report”). If the Applicant is a business entity, a Criminal History Report shall be provided for each Key Participant.

- i. Applicant shall ensure Criminal History Report accompanies the application.
 - ii. The Criminal History Report must be dated within sixty (60) days of submission of the application.
 4. Consent to Comply with Program Requirements. All Applicants shall agree to comply with Licensee requirements.
- B. Applicants shall submit applications to the Commission.
- C. Any Applicants who materially falsify any information in the application shall be automatically deemed ineligible to participate as a Licensee.

SECTION V. ISSUANCE OF LICENSES

- A. Licenses shall be valid until December 31 of the year, three (3) years after the License was issued.
- B. 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 in 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.
- C. If the Licensees are entities, then only the Key Participants shall be subject felony conviction requirements described in Section V(B) if they participate in the business operations of the Licensee.
- D. The Commission shall assign all Licensees with a license or authorization identifier in a format prescribed by the USDA.

SECTION VI. SAMPLING, TESTING AND HARVESTING

- A. Sampling.
 1. Within fifteen (15) days prior to the anticipated harvest of cannabis plants, a Licensee shall have a Commission approved official collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing.
 2. The Commission approved official collecting the samples shall provide a certificate to the Licensee and commission certifying the method used for sampling the flower material of the cannabis plant was sufficient at a confidence level of 95% that no more than 1% of the plants in the Lot would exceed the Acceptable Hemp THC Level.
 3. The Commission approved official shall certify that the method used for sampling ensured the collection represents a homogeneous composition of the Lot.

4. Upon providing sampling certification to the Commission, the Commission approved sampling official shall transport the sample to a DEA registered testing laboratory.
5. During a scheduled sample collection, the Licensee or an authorized representative of the Licensee shall be required to be present at the growing site.
6. The Commission approved sampling official and their agents shall be provided with complete and unrestricted access during business hours to all 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 Licensee locations.
7. The Licensee shall not harvest the cannabis plants prior to samples being taken.

B. Testing.

1. The sample taken shall be transported to a testing laboratory that is registered by the DEA.
2. The testing laboratory shall ensure the testing is completed using post-decarboxylation where the total THC concentration level reported accounts for the conversion of delta-9 tetrahydrocannabinol acid (“THCA”) into THC. Testing methodologies meeting the requirements of this paragraph include, but are not limited to, gas or liquid chromatography with detection.
3. The DEA registered testing laboratory shall report the results of the test which converts the THCA to determine the THC content.
4. The THC concentration levels shall be determined and reported by the DEA registered testing laboratory on a dry weight basis.
5. All analytical testing shall meet the following standard:
 - 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;
 - 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 Plan; and
 - v. measurement of uncertainty shall be estimated and reported with test results;

- vi. laboratories shall appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty; and
 - vii. any laboratory used under this Section of the Plan must have an effective destruction procedure in accordance with 21 C.F.R. § 1317.15 for samples that exceed the Acceptable Hemp THC Level.
6. For each sample tested pursuant to this Section, the Licensee shall obtain from a laboratory a certification (“Test Results Report”) to provide to the Commission, which at a minimum, shall include the following:
- i. Licensee’s license number;
 - ii. name of Licensee;
 - iii. Licensee address;
 - iv. legal description of land where Hemp is produced;
 - v. Lot identification number for the sample;
 - vi. name and DEA registration number of the laboratory;
 - vii. general information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the DEA registered laboratory;
 - viii. the date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
 - ix. the THC concentration contained in the test sample; and
 - x. a statement indicating whether the sample contained a THC concentration of not more than the Acceptable Hemp THC Level.

C. Harvesting.

1. Licensee shall harvest the crop not more than fifteen (15) days following the date of sample collection.
2. If Licensee 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.
3. harvested lots of Hemp plants shall not be commingled with other harvested lots or other material without prior written permission from USDA.
4. Lots that meet the Acceptable Hemp THC Level may enter the stream of commerce.

5. Any test result of a representative sample exceeding the Acceptable Hemp THC Level shall be conclusive evidence that the Lot represented by the sample is not in compliance. A Lot that is non-compliant cannot be further handled, processed, or enter the stream of commerce. The Licensee of a non-compliant Lot shall dispose of the Lot in accordance with Section VII of this Plan.
6. At the Licensees expense, any Licensee may request additional testing if it is believed that the original delta-9 tetrahydrocannabinol concentration level test results were in error.

SECTION VII. DESTRUCTION OF NON-COMPLIANT PLANTS

- A. Plants that test higher than the acceptable Hemp THC Level shall be considered non-compliant plants and be disposed of by the Licensee in compliance with this Section and all applicable federal laws and regulations.
- B. If a Licensee has produced cannabis exceeding the acceptable Hemp THC Level, the cannabis must be disposed of in accordance with the Controlled Substances Act and DEA regulations found at 21 CFR 1317.15.
- C. A Hemp Disposal Report must be submitted to the Commission no later than thirty (30) days after the date of completion of the disposal. The Hemp Disposal Report shall include:
 1. name and address of Licensee;
 2. Licensee's license number;
 3. location information, such as Lot number, legal description, location type, and geospatial location or other valid land descriptor for the production area subject to disposal;
 4. total acreage;
 5. information on the agent handling the disposal;
 6. date of the completion of the disposal;
 7. signature of the Licensee; and
 8. agent certification of the completion of the disposal.
- D. All costs associated with destruction shall be the responsibility of the Licensee.

SECTION VIII. VIOLATIONS OF THIS PLAN

- A. Violations of this Plan shall be subject to enforcement in accordance with this Section.
- B. Negligent Violation.
 1. A Licensee shall be subject to enforcement for negligently:

- i. failing to provide a legal description of land on which the Licensee cultivates hemp;
 - ii. failing to obtain a license or other required authorization from the Commission as applicable; or
 - iii. 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.
2. For each negligent violation committed by a Licensee, the Commission 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 Commission. At a minimum the Commission 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 Commission to determine if corrective action has been implemented by the Licensee. The Commission's corrective action plans shall:
 - i. provide a date by which the Licensee shall correct the negligent violation;
 - ii. include steps required by the Commission to correct each negligent violation; and
 - iii. require the Licensee to provide a description of procedures to the Commission to demonstrate compliance with the required corrective action plan.
3. A Licensee that negligently violates this Plan according to Section VIII(B)(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. 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.
5. A Licensee that negligently violates this Plan according to Section VIII(B)(1) 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.

1. 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:

- i. the United States Attorney General; and
 - ii. the Otoe-Missouria Police Department.
2. Paragraphs B(1) and B(2) of this Section shall not apply to violations where the culpable mental state is greater than negligence.

SECTION IX. INSPECTIONS

- A. The Commission 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. Inspection may include sampling and testing by the Commission to determine THC levels.
- B. Inspection visits may be conducted on a Business Day at any time during regular business hours. The Commission shall be granted unrestricted access to the Lots.
- C. All samples collected by the Commission shall become the property of the Tribe and no compensation shall be owed by the Tribe or Commission for such samples.
- D. The Commission shall keep test results for all plants tested for a minimum of three (3) years.
- E. The Commission shall conduct inspections of Licensees found to have negligently violated this Plan according to Section VIII(B)(1) to ensure the Licensee's compliance with the corrective action plan produced by the Commission according to Section VIII(B)(2).

SECTION X. RECORDKEEPING

- A. Commission Recordkeeping:
 1. The Commission shall maintain records of all information gathered by Applicants under Section IV for at least three (3) years.
 2. The Commission shall keep all findings under Section IX(D) for at least three (3) years.
 3. The Commission shall retain all reports submitted by Licensee under Section XI(B) for a period of at least three (3) years.
- B. Licensee Recordkeeping:
 1. Licensees shall maintain the following records and reports for at least three (3) years:
 - i. Records regarding the acquisition of Hemp plants;
 - ii. records regarding production and handling of Hemp plants;
 - iii. Records regarding storage of Hemp plants;

- iv. Test Results Report;
- v. Hemp Disposal Report;

2. All records and reports shall be made available for inspection by the Commission.

SECTION XI. REPORTING

A. Commission Reporting:

1. Licensee Report. The Commission shall submit to USDA prior to the first business day of each month a report providing the contact information and the status of the license issued for each Licensee. The Licensee Report shall contain the following:
 - i. each new licensee who is an individual and is licensed by the Commission shall include full name of the individual, license number, business address, legal description of land where hemp is being produced, telephone number, and email address;
 - ii. each new Licensee that is an entity licensed by the Commission shall include full name of the entity, the principal business location address, license number, and the full name, title, EIN number and email address of each Key Producer who is required to submit a criminal history report;
 - iii. for each Licensee that was included in a previous report and whose reported information has changes, the report shall include the previously reported information and the new information;
 - iv. the status of each Licensee;
 - v. the time period covered by the Licensee Report; and
 - vi. the Licensee Report shall include whether there were no changes during the current reporting cycle, if applicable.
2. Hemp Disposal Report. The Commission shall submit to USDA prior to the first business day of each month a report notifying USDA of non-conforming plants or plant material. The Hemp Disposal Report Shall contain all the required information under Section VII(C).
3. Test Results Report. Upon receiving the Test Results Report, the Commission shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of Hemp in this Plan and attach the records demonstrating the appropriate disposal of all of those plants and materials in the Lot which the representative samples were taken.
4. Annual Report. The Commission shall submit an Annual Report to USDA by December 15 of each year. The Annual Report shall contain the following:
 - i. total planted acreage;
 - ii. total harvested acreage;

- iii. total acreage disposed; and
- iv. all Test Results Reports for the year.

B. Licensee Reporting:

- 1. Hemp Disposal Report. Upon receiving the Hemp Disposal Report, the Licensee shall promptly send the Hemp Disposal Report to the Commission pursuant to Section VII(C).
- 2. Test Results Report. Upon receiving the Test Results Report, the Licensee shall promptly send the Test Results Report to the Commission pursuant to Section VI(B)(6).

SECTION XII. INFORMATION SHARING

- A. The Commission shall collect information from Licensees and submit it to the USDA. The Licensees should also submit the same collected information to FSA. The information shall include:
 - 1. all hemp crop acreage information as required under Section IV(A)(2) of this Plan;
 - 2. the license number issued to the Licensee by the Commission;
 - 3. the total acreage of hemp planted, harvested, and, if applicable, disposed by the Licensee.
- B. All information received shall be submitted to the USDA and FSA not more than 30 days after which the information was received and in a format compatible with USDA's information sharing system.


OTOE-MISSOURIA TRIBAL HEMP COMMISSION

HEMP PROGRAM CERTIFICATION

I hereby certify that the Otoe-Missouria Tribal Hemp Commission, a regulatory subdivision of the Otoe-Missouria Tribe created to regulate hemp, has the resources and personnel necessary to carry out the practices and procedures described in the Otoe-Missouria Tribal Hemp Regulatory Plan in accordance with Section 297(B)(a)(2) of the Agriculture Improvement Act of 2018 and regulations promulgated thereunder.

Date: 12-20-2019

Respectfully,



John Shotton, Chairman
Otoe-Missouria Tribe of Indians