

TONTO APACHE TRIBE HEMP CULTIVATION PLAN

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TONTO APACHE TRIBE HEMP CULTIVATION PLAN

Section # 1 – Authorized Conduct:

The Tonto Apache Tribe authorizes Hemp cultivation and establishes primary regulatory authority over Hemp cultivation within the Territory of the Tonto Apache Tribe.

Section # 2 – Definitions:

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

- (a) “Acceptable Hemp THC Level” means when a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The Acceptable Hemp THC Level for the purpose of compliance with the requirements of this hemp plan is when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured total 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.
- (b) “AMS” means the United States Department of Agriculture Agricultural Marketing Service.
- (c) “Business day” means any calendar day except Saturday, Sunday, and any federal holiday.
- (d) “DEA” means the U.S. Drug Enforcement Administration.
- (e) “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.
- (f) “FSA” means the United States Department of Agriculture Farm Service Agency.
- (g) “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 total delta-9 tetrahydrocannabinol

concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis.

- (h) “Key Participant” is a person or persons who have a direct or indirect financial interest in the entity cultivation of Hemp, such as an owner or partner in a partnership. A Key Participant also includes individuals in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include management such as farm, field, or shift managers.
- (i) “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
- (j) “Licensee” means any person licensed by the Commission to engage in cultivation of Hemp.
- (k) “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. The term “Lot” also means the terms “farm”, “tract”, “field”, and “subfield” as these are used by the FSA. 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.
- (l) “Sampling Agent” means an agent of the Commission trained to take samples of Hemp for testing and regulatory purposes.
- (m) “Secretary” means the Secretary of Agriculture.
- (n) “Territory” means (i) all land within the limits of the Tonto Apache Reservation held in trust under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the Tonto Apache Reservation; (ii) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (iv) any lands title to which is either held in trust by the United States for the benefit of the Tonto Apache Tribe or held by the Tonto Apache Tribe subject to restriction by the United States against alienation and over which the Tonto Apache Tribe exercises jurisdiction.
- (o) “THC” means delta-9- tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

- (p) “USDA” means the United States Department of Agriculture.

Section # 3 – Regulation of Hemp Cultivation:

- (a) Establishment. The Tribal Council hereby establishes the Tonto Apache Tribe Hemp Commission (“Tribal Hemp Commission”) as a governmental subdivision of the Tribe, charged with implementation, administration, regulation, and enforcement of Hemp cultivation.
- (b) Tribal Hemp Commission Membership. The Tribal Hemp Commission shall be governed by the Agent(s) appointed by the Council pursuant to the Tribal Consumer Financial Services Regulatory Ordinance Section 4.8 (a).
- (c) Powers. The Commission may exercise the following powers to properly regulate Hemp cultivation:
- (1) conduct random inspections of Licensees pursuant to Section 5 to ensure compliance with the laws of the Tonto Apache Tribe and applicable federal laws; or
 - (2) propose regulations to the Tribal Council necessary to carry out the implementation of this Plan.
- (d) Duties. The Commission shall:
- (1) draft applications pursuant to Section 4(b);
 - (2) assign Licenses pursuant to Section 4(d);
 - (3) conduct an annual inspection of, at a minimum, a random group of Licensees pursuant to Section 5 to verify that Hemp is not produced in violation of this Plan;
 - (4) sample Hemp pursuant to Section 6(a);
 - (5) conduct testing pursuant to Section 6(b);
 - (6) maintain records received from applicants under Section 4(c) for at least three (3) years;
 - (7) maintain investigation findings pursuant to Section 5 for at least three (3) years;
 - (8) maintain all reports submitted by Licensee pursuant to Section 4(f) for at least three (3) years;

- (9) draft and submit the Licensee Report pursuant to Section 7(a) to USDA in a digital format prior to the first Business Day of each month;
- (10) submit the Hemp Disposal Report received by Licensee pursuant to Section 7(b) to USDA in a digital format prior to the first Business Day of each month;
- (11) promptly notify USDA by certified mail or electronically of any final Test Results Report received under Section 4(f)(3);
- (12) draft and submit the Annual Report to USDA prior to December 15 pursuant to Section 7(d);
- (13) receive information under Section 7(e) from Licensee and submit it to the USDA within thirty (30) days of receipt and in a format compatible with USDA's information sharing systems;
- (14) establish a Corrective Action Plan pursuant to Section 8(a)(2);
- (15) conduct annual inspections pursuant to Section 5 of a random group of Licensees to verify that Hemp is not produced in violation of this Plan;
- (16) conduct inspections of Licensees who negligently violated this Plan; and
- (17) provide notice required under Section 8(b) for violations where Licensee had a culpable mental state greater than negligence.
- (18) Establish Tribal training procedures to certify Sampling Agents.

Section # 4 – Hemp Cultivation License:

- (a) License Required. Any person Cultivating or intending to Cultivate Hemp within the Territory shall first obtain a License from the Commission.
- (b) Application Contents. The Application shall include:
 - (1) contact information of the applicant including their full legal name, mailing address, telephone number, and email address;
 - (2) contact information for business entity applicants including the full legal name of the entity, address for principal place of business, and the job title for each Key Participant, the full legal name of each Key Participant, EIN number for each Key Participant, and email address for each Key Participant;
 - (3) location of where Hemp will be Cultivated including street address, legal description of land, geospatial location for each Lot, and the acreage number or greenhouse square footage dedicated to Hemp cultivation; and

- (4) a current Federal Bureau of Investigation Identity History Summary (“Criminal History Report”) dated within sixty (60) days of submission of the application for each individual applicant and the Key Participant(s) of each business entity applicants.
- (c) Application.
- (1) 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.
 - (2) Any applicants who materially falsifies any information in the application shall be automatically deemed ineligible to participate as a Licensee.
- (d) Issuance of License.
- (1) Licenses shall be valid until December 31 three (3) years after the License was issued.
 - (2) A License is a revocable privilege to conduct Hemp cultivation from within the Territory.
 - (3) Licenses are non-transferable or assignable unless approved in writing by the Commission.
 - (4) Licenses must be provided in a format prescribed by the USDA.
- (e) Eligibility. 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 to receive a License under Section 4(d), during the ten (10) year period following the date of the conviction unless the person was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018 and whose felony conviction occurred before December 20, 2018.
- (f) Duties of Licensee. Licensees shall:
- (1) provide fifteen (15) days notice to the Commission of harvest date to schedule sampling as required under 6(a)(1);
 - (2) attend investigations and sampling of Hemp conducted by Commission or cause an authorized representative of Licensee to be present during an investigation or sampling;
 - (3) promptly send the Commission the final Test Results Report received pursuant to Section 6(b)(11);
 - (4) dispose of Lot if testing indicates Hemp that contains higher than the Acceptable Hemp THC Level in accordance with the Controlled Substances

Act and DEA regulations found at 21 CFR 1317.15. Disposal must be conducted by a DEA registered reverse distributor or Tribal Law Enforcement, who will then provide the Commission with written verification of the disposal;

- (5) create and promptly send Commission the Hemp Disposal Report pursuant to Section 7(b);
- (6) maintain records regarding acquisition of Hemp for at least three (3) years;
- (7) maintain records regarding cultivation and handling of Hemp for at least three (3) years;
- (8) maintain records regarding storage of Hemp for at least three (3) years;
- (9) maintain records of all Test Results Reports received pursuant to Section 6(b)(11) for at least three (3) years;
- (10) maintain records of all Hemp Disposal Reports created pursuant to Section 7(b) for at least three (3) years;
- (11) prepare and submit information required under Section 7(e) to the Commission each month;
- (12) make all records and reports available for inspection by the Commission;
- (13) bear any costs associated with Section 4(f) and Section 6;
- (14) provide Commission 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 cultivation, handling or storage, and all locations listed in the Licensee's license; and
- (15) prepare and submit the following information to FSA each month:
 - I. street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If a Licensee operates in more than one location, that information shall be provided for all production sites.
 - II. Hemp crop acreage;
 - III. total acreage of Hemp planted, harvested, and disposed of;
 - IV. acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of Hemp; and
 - V. License or authorization identifier.

Section # 5 – Inspections:

Inspections may include random sampling and testing by the Commission pursuant to Section 6 to determine Hemp compliance with the Plan. Commission inspections shall be conducted on a Business Day during normal business hours. All samples collected by the Commission become the property of the Tonto Apache Tribe and no compensation by the Tonto Apache Tribe or the Commission is required. Licensees do not have a reasonable expectation to privacy with respect to buildings or sites where Hemp is located. Inspections shall be conducted at least annually. The Commission shall have the authority to conduct such random inspections of Licensees, all lots, and of individuals reported to be growing Hemp in an unlicensed area.

Section # 6 – Sampling, Testing and Harvesting:

- (a) Sampling. The sampling process shall be conducted as follows:
- (1) within thirty (30) days prior to the anticipated harvest date, the Commission shall have a sampling agent collect samples from the flower material of Hemp for delta-9 tetrahydrocannabinol concentration level testing. Licensees may only collect samples from their own growing facilities for informal sampling;
 - (2) the sampling agent shall be provided complete and unrestricted access during business hours to all Hemp and other cannabis plants (whether growing or harvested), to areas where Hemp is grown or stored, and to all land, buildings, or other structures used for the cultivation, handling, or storage of all Hemp and other cannabis plants, and all locations listed in the Licensee’s license;
 - (3) samples shall be obtained from the flowering tops of the plants when flowering tops are present, and shall be approximately five (5) to eight (8) inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of a plant;
 - (4) samples of Hemp from one lot shall not be commingled with Hemp from other lots;
 - (5) for lots ten (10) acres or smaller samples shall be obtained from a minimum of one (1) plant per acre of the total acreage of the lot then combined to form a composite sample;
 - (6) for lots larger than ten (10) acres, including greenhouses, the number of plants that should be selected to form a composite sample shall be based upon Codex Alimentarius Recommended Methods of Sampling for Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.

- (7) the sampling agent shall take all reasonable steps to ensure that a sample is collected that represents a homogenous composition of the lot by avoiding edges and thoroughfares;
 - (8) the Licensee of designated employee should be present throughout the sampling process, if possible;
 - (9) the Commission must certify the sampling agent used the standard sampling method used for sampling the flower material of the Hemp and that such method represents a homogeneous composition of the Lot and was sufficient at a confidence level of 95% that no more than 1% of the Hemp in the Lot would exceed the Acceptable Hemp THC Level; and
 - (10) the Commission shall transport sample to a DEA registered laboratory.
- (b) Testing. Testing shall be conducted by a DEA registered laboratory as follows:
- (1) completed using post-decarboxylation where the total THC concentration level reported accounts for the conversion of Delta-9 Tetrahydrocannabinol acid (“THCA”) into THC and reported by the DEA registered testing laboratory on a Dry Weight Basis;
 - (2) testing methodologies meeting the requirements of this paragraph include gas or liquid chromatography with detection;
 - (3) laboratory quality assurance must ensure the validity and reliability of test results;
 - (4) 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;
 - (5) the demonstration of testing validity must ensure consistent, accurate analytical performance;
 - (6) method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan;
 - (7) measurement of uncertainty shall be estimated and reported with test results;
 - (8) laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluations of measurement of uncertainty;

- (9) 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;
 - (10) Sample preparation of pre- or post-harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing;
 - (11) DEA registered laboratory shall ensure results are sent to Licensee;
 - (12) Licensee may request additional testing if it is believed test results were in error;
 - (13) Laboratories shall only submit final test results used to determine compliance with this Plan to the Commission and the USDA through the laboratory's online HeMP account; and
 - (14) Licensees may have informal testing done on samples at any time. Informal testing results may not be used to determine the Acceptable Hemp THC level. Test results from informal testing throughout the growing season shall not be reported to the Commission.
- (c) Harvesting. A harvest must occur no later than thirty (30) days from when a sample pursuant to this Plan was collected. If a harvest does not occur within thirty (30) days of the sample, a second pre-harvest sample of the Lot must undergo testing. Harvested Lots may not be commingled with other harvested Lots or other material until a compliant test result is received. A harvest of any cannabis may not occur prior to samples being taken. Any Hemp grown in a lot where the Acceptable Hemp THC Level is noncompliant may not be processed or enter the stream of commerce and must be handled pursuant to Section 4(f)(4).

Section # 7 – Reports:

- (a) Licensee Report. The Licensee Report shall include:
- (1) full name of individual Licensee;
 - (2) full name of entity Licensee;
 - (3) full name of entity Key Participants;
 - (4) position title of Key Participants;
 - (5) License number;
 - (6) legal description or geospatial location of location where Hemp is being produced;

- (7) EIN number for each Key Participant;
- (8) telephone number and email address for each Key Participant;
- (9) updated information from previous Licensee Report's
- (10) status of each Licensee's license;
- (11) time period covered by each Licensee Report;
- (12) indication of whether reporting cycle did not contain any changes.

(b) Hemp Disposal Report. The Hemp Disposal Report shall include:

- (1) name and address of Licensee;
- (2) 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 or greenhouse square footage;
- (5) information on the agent handling the disposal;
- (6) date of the completion of disposal;
- (7) signature of the Licensee;
- (8) Commission agent certification of the completion of the disposal.

(c) Test Results Report. The Test Results Report shall include:

- (1) name and address of Licensee;
- (2) License number;
- (3) location information, such as legal description, location type, and geospatial location;
- (4) Lot number for where sample was taken;
- (5) Name and DEA registration number of the laboratory;
- (6) 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;

- (7) the date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
 - (8) the THC concentration contained in the test sample; and
 - (9) a statement indicating whether the sample contained a THC concentration of not more than the Acceptable Hemp THC Level.
- (d) Annual Report. The Annual Report shall include:
- (1) total Hemp acreage or greenhouse square footage planted by all Licensees;
 - (2) total Hemp acreage or greenhouse square harvested by all Licensees;
 - (3) total amount of Hemp disposed of by all Licensees.
- (e) Information Sharing Report. The Information Sharing Report shall include:
- (1) location information, such as street address, Lot number, legal description, location type, and geospatial location;
 - (2) License number issued to Licensee by Commission; and
 - (3) acreage or greenhouse square of Hemp planted;
 - (4) acreage or greenhouse square footage amount of Hemp harvested;
 - (5) acreage or greenhouse square footage of Hemp disposed of.

Section # 8 – Violations: Violations shall be subject to enforcement in accordance with this Section 8.

- (a) Negligent Violations. Licensees shall not receive more than one negligent violation per growing season.
- (1) A Licensee is subject to enforcement for negligently:
 - I. failing to provide an accurate legal description of land on which Licensee Cultivates Hemp;
 - II. failing to obtain or renew a License from the Commission; 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 1.0 percent on a Dry Weight Basis.

- (2) If a Licensee committed a negligent violation pursuant to Section 8(a)(1), the Licensee shall comply with the terms of a Corrective Action Plan, which at a minimum shall:
 - I. provide a reasonable date by which the Licensee must 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 demonstrating compliance with the Corrective Action Plan;
 - IV. be in place at a minimum for two (2) years; and
 - V. Require the Licensee to periodically report to the Commission on its compliance with the Hemp Plan and the Corrective Action Plan for no less than two (2) years from the date of the negligent violation.
- (3) A Licensee that negligently violates this Plan according to Section 8(a)(1) shall not, as a result of that violation, be subject to any criminal enforcement action by the federal government or any state government or the Tonto Apache Tribe.
- (4) If a Licensee commits a subsequent violation while the Corrective Action Plan is still in effect, 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 8(a)(1) three (3) times in a five (5) year period shall have their License revoked and be ineligible to cultivate Hemp within the jurisdiction of the Tonto Apache Tribe for a period of five (5) years beginning on the date of the third violation.
- (b) Commission Inspection. The Commission shall conduct an inspection to determine if the Corrective Action Plan has been implemented as submitted.
- (c) Culpable Mental State Greater than Negligence. 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:
 - (1) the United States Attorney General; and
 - (2) the local law enforcement of Gila County.

Section 8(a) does not apply to violations where the Licensee has a culpable mental state greater than negligence.

TRIBAL HEMP COMMISSION
HEMP PROGRAM CERTIFICATION

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

Date: _____

Respectfully,

Calvin Johnson, Chairman
Tonto Apache Tribe