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## HEMP PRODUCTION PLAN

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## **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 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.
- 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 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.
- 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.
  - 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.
  - 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;
    - iii. 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**

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 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 the 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
  - 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 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.
- 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 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.
- 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 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 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;
  - 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.

#### **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 1<sup>st</sup> 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.
  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.
- 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, 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 15<sup>th</sup> of each year. Annual Reports shall include the following information:
  1. Total planted acreage
  2. Total harvested acreage
  3. Total acreage disposal
- 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.

**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.

### **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 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.