

Turtle Mountain Band of Chippewa Indians Hemp Plan

Section 1: General Provisions

1.01 Findings

1. The Turtle Mountain Tribal Council hereby finds and declares that:
 - a. Hemp is a valuable agricultural crop
 - b. This Plan will protect the health, safety, and welfare of the Tribe by becoming the primary regulatory authority over the production of hemp within the Tribe's jurisdiction;
 - c. The adoption of this Plan is in the Tribe's best interest; and
 - d. The Agriculture Improvement Act of 2018 (commonly known as the 2018 Farm Bill) allows for the growth and processing of hemp, subject to regulations, so long as the hemp has a THC concentration of less than the acceptable hemp THC level; and
 - e. The Tribe has sufficient resources and personnel to carry out the practices and procedures described in this Plan.

1.02 Policy and Purpose

1. This Plan establishes the requirements for licensing and cultivation of hemp. The purposes of this Plan are to:
 - a. Promote the production of hemp, and the development of new commercial markets for farmers and business through the sale of hemp products;
 - b. Promote the creation of the Tribe's hemp industry to the maximum extent permitted by law; and
 - c. Regulate hemp as an agricultural commodity in compliance with Federal law.

1.03 Compliance with Federal Law

Nothing in this Plan authorizes any Person to violate any Federal Law or regulation.

1.04 Sovereign Immunity Preserved

Nothing in this Plan shall be interpreted as a waiver of the Turtle Mountain Band of Chippewa Indians sovereign immunity from unconsented lawsuit, or as authorization for claim for money damages against the Tribe.

1.05 Jurisdiction

All applicants and license holders acknowledge and agree that, by submitting a Hemp Production License Application, or other application under this Plan, the applicant or Licensee submits to the jurisdiction of the Tribe and Tribal Court.

Section 2: Definitions

2.01 Definitions

1. “Acceptable Hemp THC level” means when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for a hemp sample produces a distribution or range that includes 0.3% or less.
2. “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Hemp Production Program.
3. “Building” means any single standing structure with walls and a roof but shall not include separate structures connected by corridor or breezeways.
4. “Contiguous field” means any contiguous tract of land used for the cultivation of hemp and may include contiguous tracts of land occasionally intersected by roads, streams or other natural features but shall not include a tract or tracts of land intersected by property owned by a third party or gaps in the cultivation of hemp exceeding one quarter of a mile.
5. “Commercial Sales” means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the Internet.
6. “Constitution” means the Constitution of the Turtle Mountain Band of Chippewa Indians.
7. “Cultivate” means to plant, water, grow, or harvest a plant or crop.
8. “Cultivation site” means the contiguous field, building, or other area hemp may be lawfully cultivated.
9. “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.
10. “Department” means the Tribal Hemp Department.
11. “Department Officer” means the Department Officer of the Hemp Department.
12. “Disqualifying drug conviction” means a conviction related to a controlled substance that is either a felony under state or federal law or equivalent to a Schedule 5 offense under Title 26 Offenses and Penalties of the Turtle Mountain Band of Chippewa Indians Tribal Code that occurred before, on or after the enactment of the 2018 Farm Bill and which disqualifies an individual from participating in the program for ten (10) years following the date of the conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date.
13. “FSA” means the USDA Farm Service Agency.
14. “GPS” means global positioning system.
15. “Hemp” means the plant *Cannabis sativa L.*, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than three tenths of one percent (.3%) on a dry weight basis, or as otherwise defined in Federal law, whichever is greater.

16. "Jurisdiction" means the Tribe's jurisdiction as defined in Article II of the Constitution. The Tribe hereby asserts jurisdiction over any cultivation site on fee land within the Tribe's Reservation boundaries.
17. "Key Participant" means the individual applying for or holding a Hemp Production License, and any owners, directors, subcontractors, or other persons who have a direct or indirect interest in the entity producing hemp.
18. "Licensee" means any person or corporation possessing a license issued by the Department to participate in the Hemp Production Program.
19. "Negligence" means the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.
20. "Produce" means to grow or cultivate hemp within the Tribe's jurisdiction.
21. "Subcontractor" means a person or business entity that has contracted with a license and provides supplies, labor, land, or expertise related to the Licensee's participation in the Hemp Production Program.
22. "THC" means delta-9 tetrahydrocannabinol measured post decarboxylation.
23. "Tribe" means the Turtle Mountain Band of Chippewa Indians.
24. "USDA" means the United States Department of Agriculture.
25. "Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

Section 3: Creation of the Hemp Department

3.01 Department Officer Appointment

The Tribal Council shall appoint a Hemp Department Officer, who shall be the chief administrative officer of the Hemp Department. The Hemp Department Officer shall be selected on the basis of administrative ability and general knowledge of tribal agriculture and hemp production.

3.02 Powers and Duties of the Department Officer

1. The Department Officer shall have the authority to appoint and manage a reasonable staff as required to carry out the powers and duties of the Department.
2. In addition to any other powers and duties set forth in this Plan, the Department Officer shall supervise and control all activities, functions, and employees of the Department and shall oversee the enforcement of the provisions of this Plan, including any rules and regulations promulgated by the Department.

3.03 General Powers of the Hemp Department

1. The Hemp Department shall have the following powers to regulate hemp production within the Tribe's jurisdiction:
 - a. Promulgate implementing regulations for this Plan as is necessary and appropriate;

- b. Set the policies and procedures and establish and collect license and testing fees for all hemp production;
- c. Modify, adapt, or amend such policies and procedures as necessary, to keep them in line with best industry practices and procedures as well as applicable Tribal, state, or federal law;
- d. Review applications and issue licenses for hemp cultivation;
- e. Conduct (or cause to be conducted) the sampling, testing, and inspection of industrial hemp fields and industrial hemp handling facilities, including places where hemp is grown, stored, or handled;
- f. Conduct (or cause to be conducted) record audits of industrial hemp Licensees;
- g. Produce and maintain all forms for application, registration, reporting, or other activity required under this Plan, Department policy, or regulations promulgated under this Plan;
- h. Set administrative procedures for and impose appropriate corrective action for violations of this Plan; and
- i. Advise the Chairman and Tribal Council and make recommendations pertaining to hemp production on the Reservation and annual budgets required to accomplish the purposes of this Plan.

Section 4: License Application

4.01 Procedure for License Application:

1. Any person or individual holding more than ten percent of the equity interest in an entity that desires to produce hemp within the Tribe's jurisdiction must have a valid Hemp Production License from the Department prior to engaging in any such activity. A valid license means the license is unexpired, unsuspended, and unrevoked. Any person who does not hold a valid license from the Department shall not engage in hemp production within the Tribe's jurisdiction.
2. Any person who wishes to produce hemp within the Tribe's jurisdiction, including, but not limited to, employees and contractors, shall submit a complete license application to the Tribe annually. An applicant must be at least eighteen years of age to be eligible to receive a license.
3. An applicant must submit a complete Hemp Production License Application, on the form designated by the Department, to the Department. All applications must be complete in every material detail. All applications must include all attachments or supplemental information required by the current forms supplied by the Department. The application and attached materials will become the property of the Department upon submission.
4. An applicant shall submit, at a minimum, his or her full name, mailing address, telephone number, and email address. If the applicant represents a business entity, the applicant shall submit the full name of the business, the jurisdiction of formation, the principal business address, the full name of the person who will have the power to bind

the entity, his or her phone number and email address, and the employer identification number (“EIN”) of the business. The applicant must also submit the legal description of the area where hemp will be produced. The Department may require additional information for licensure, as the Department deems necessary. Any application that is missing required information shall be denied.

5. All applicants must provide the Department with a complete criminal history report for all key participants in the entity producing hemp on a form determined by the Department. Any applicant may be required to establish his or her identity and age by official documents. Applicants may be required to sign an authorization to release information as prescribed by the Tribe. All applicants shall undergo and pay for an annual criminal background check.

6. A license modification is required if there is any change to the information submitted in the application including, but not limited to, sale of a business, production of hemp in a new location, or a change in the key participants producing under a license.

7. A license will not be issued unless:

- a. The application submitted for Department review is complete and accurate;
- b. The criminal history report(s) confirm that all key participants covered by the license have not had disqualifying drug conviction under state, Tribal, or federal law in the last ten (10) years;
- c. The application contains no materially false statements or misrepresentations and the applicant has not previously submitted an application with any materially false statements or misrepresentations;
- d. The applicant is currently in good standing with the Department;

8. Grounds for denial of application. The Department may consider certain factors when determining whether to accept or deny a license application, these factors include, but are not limited to:

- a. Whether the Licensee or any owner, director, manager, or subcontractor has a disqualifying drug conviction;
- b. The Licensee materially falsified information on the;
- c. Any prior administrative actions taken by the Department against the Licensee; and
- d. Any other reasonable factor.

9. The Department shall apply the same standard of scrutiny to each license application and shall not deny an application without good cause.

10. The Department shall notify the applicant of the application’s acceptance or denial by email or letter within a reasonable amount of time:

- a. If the application is approved, a license will be issued.
- b. If the application is denied, the Department shall provide the applicant with an explanation as to why the application was denied.

11. The Department shall retain all information collected through the license application for a period of at least three (3) calendar years.

4.02 Fees

1. In addition to submitting a Hemp Production License Application, each applicant shall submit any application fee(s) set by the Department.

2. The Department 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 Tribe's Hemp Production Program.

Section 5: Hemp Production License

5.01 Hemp Production License Generally

1. The Department shall assign each Hemp Production License a license or authorization identifier in the format prescribed by the USDA.

2. A Hemp Production License must be renewed annually at a time determined by the Department. To renew a Hemp Production License, the Licensee must submit a Hemp Production License Renewal Application, on a form determined by the Department.

3. Hemp Production Licenses shall not be assigned or transferred. An individual seeking to obtain a Hemp Production License may only submit an application on his or her behalf. The applicant shall not submit an application to act as a stand in for another individual who is ineligible to receive a license. If the Department determines that an individual submitted an application for the purpose of acting as a stand in, the Department shall immediately deny the application or revoke the license and may take any further action as the Department deems appropriate.

4. The Department may revoke a Hemp Production License if the Licensee:

- a. Pleads guilty to or is convicted of any felony under state or federal law or schedule 5 offense under Tribal law related to a controlled substance; or
- b. Makes any materially false statement in any application, report, or inspection to Department officials or the USDA; or
- c. Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or
- d. Is found to be growing cannabis outside of the licensed area with a culpable mental state greater than negligence; or
- e. Negligently violated this Plan more than three times in five years; or
- f. Any other reason deemed appropriate by the Department.

5.02 License Terms and Conditions

1. By submitting a Hemp Production License Application or Hemp License Renewal Application, the applicant acknowledges and agrees to the following minimum terms and conditions:

- a. Any information provided to the Department may be provided to law enforcement agencies and the USDA without further notice to the applicant or Licensee;
- b. The applicant or Licensee shall allow and fully cooperate with any inspection and sampling, including random sampling, that the Department deems necessary;
- c. All records relating to hemp production shall be made available for inspection by the Department, at any time during reasonable business hours.
- d. Pay for any inspection and laboratory analysis costs that the Department deems necessary;
- e. To consent to forfeiture and destruction without compensation of:
 - a. Material found to have measured THC greater than .3%;
 - b. Plants located in unlicensed areas; and
 - c. Plants not accounted for in the required reporting.
- f. To submit all required information and reports to the Department on the date specified by the Department;
- g. To submit to a criminal history report for all required individuals in the form and at the times specified by the Department;
- h. To report any felony convictions relating to controlled substances under state, Federal, or Tribal law to the Department within five (5) business days of receiving notice of the conviction;
- i. To pay all fees imposed by the Tribe;
- j. To consent to the jurisdiction of the Department, the Tribe, and the Tribal Court.
- k. That hemp shall not be produced in any location other than the location listed on the license application; and
- l. That the Licensee shall comply with all restrictions and regulations established by the Department and Tribe relating to hemp production.

5.03 Eligibility

1. The following persons shall be ineligible for a Hemp Production License:
 - a. Any Person convicted disqualifying drug conviction as defined in Section 2.01(12).
 - b. A Licensee that negligently violates this Plan three (3) times in a five (5) year period shall be ineligible to participate in the Hemp Production Program for a period of five (5) years beginning on the date of the third violation.
 - c. Any Person who materially falsifies any information contained in an application to participate in Hemp Production Program shall be ineligible to participate in the TMBCI Hemp Program.

Section 6: Inspections, Reporting, and Recordkeeping

6.01 Inspection

1. The Department shall have authority to conduct random inspections of all cultivation sites to verify compliance with all requirements of the license issued. Inspections may include sample collection by Department inspectors of a Licensee's hemp or hemp product for testing to determine THC levels, or any other Department-defined purpose.
2. The Department shall conduct inspections of cultivation sites to ensure that hemp is not being produced in violation of this Plan:
 - a. Inspections shall be, at least, annually, may be randomly selected, and will be performed without advance notice.
 - b. All Licensees shall grant the Department unrestricted access to:
 - i. All hemp, and other cannabis plants, if any, whether growing or harvested;
 - ii. All land, buildings, and/or other structures, if any, used for hemp production; and
 - iii. All locations listed in the Hemp Production License.
 - c. Inspections may be conducted at any time during regular business hours.
 - d. A Licensee may apply to the Department for retesting and/or resampling of any non-complaint cultivation site within fourteen (14) calendar days from the date of notification of non-compliant test results, which may be approved or denied at the Department's discretion.
3. All samples collected by the Department shall become the property of the Department the Department shall owe no compensation to the Licensee for such samples.
4. The Department shall keep test results for all Hemp Products tested for a minimum of three (3) years.

6.02 Licensee Reporting:

1. All Licensees shall report hemp crop acreage with the USDA Farm Service Agency and shall provide, at a minimum, the following information:
 - a. Street address and, to the extent practicable, geospatial location for each cultivation site or greenhouse where hemp will be produced. If a producer operates in more than one location, that information shall be provided for all production sites;
 - b. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp; and
 - c. License number.
2. All Licensees shall maintain records of all hemp plants acquired, produced, handled, or disposed of as will substantiate any required reports. All records and reports shall be maintained for at least three years.

3. All Licensees shall also report to the Tribe the total acreage of hemp planted, harvested, and, if applicable, disposed of. The Tribe shall collect this information and report it to the USDA Agricultural Marketing Service.

4. A Licensee may submit a Crop Acreage Report (FSA-578 form) to the USDA.

6.03 Department Recordkeeping and Reporting

1. The Department shall retain all information required under this Plan for a Hemp Production License for a period of at least (3) calendar years.

2. The Department shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under this Plan. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall clearly state the reporting period and be submitted using a digital format compatible with USDA's information sharing systems, whenever possible.

3. For a newly licensed Licensee, the report must contain the following information:

- a. Licensee's license number;
- b. Licensee's contact information including name, address, telephone number and email address and, if the Licensee is a business entity, the full name, Plan and contact information of all the entity's authorized representatives;
- c. If the Licensee is a business entity the:
 - i. Full name of the business;
 - ii. Address of the principal business location;
 - iii. Full name and of all key participants in the business; and
 - iv. EIN number of the business entity.
- d. A legal description of the land on which the Licensee will produce hemp within the Tribe's jurisdiction, including, to the extent practicable, its geospatial location;

4. For a Licensee whose information has been previously reported to the USDA, the report must contain the following information:

- a. Licensee's license number;
- b. For each Licensee 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;
- c. For each Licensee that was included in a previous report and whose reported information has not changed, the report shall include a statement that there was no change during the current reporting cycle; and
- d. The status of the Licensee's license and, if applicable, reason for change in status.

5. The Department must report information for all non-compliant hemp materials disposed of pursuant to Section 7.06 to the USDA by the first of the month, or if the first of the month falls on a weekend or a holiday, by the first business day following the first of the month. The following information must be included in the report for all Licensee's subject to disposal:

- a. Name and address of the Licensee;
- b. Licensee's license number;
- c. A legal description and, to the extent practicable, the geospatial location for the disposed of area;
- d. Name and position of the agent handling the disposal;
- e. Disposal completion date; and
- f. Total acreage for the disposed of area.

6. The Department shall submit a Tribal Annual Hemp Report to the USDA by December 15th of each year with the following information:

- a. Total planted acreage;
- b. Total harvested acreage;
- c. Total acreage disposed;

Section 7: Procedure for Sampling and Testing

7.01 In General:

All compliance or other testing required by this Plan shall be conducted by a laboratory that meets all Tribal and applicable federal requirements.

7.02 Requirements for sampling:

1. All samples collected for compliance or inspection purposes must be collected:
 - a. By an authorized Department official in the manner required by Department established standards and procedures;
 - b. From the flower material of sampled cannabis plant; and
 - c. Using a method for sampling that ensures that a representative sample is collected that represents a homogenous composition of the cultivation.
2. During a scheduled sample collection:
 - a. The Department shall have unrestricted access to:
 - i. All hemp, and other cannabis plants, if any, whether growing or harvested;
 - ii. All land, buildings, and/or other structures, if any, used for the hemp production; and
 - iii. All locations listed in the Hemp Production License.
 - b. The Licensee or an authorized representative of the Licensee shall be present for sampling.

7.03 Requirements for testing

1. All analytical testing done on samples collected by the Department to test the concentration levels of THC for compliance purposes must, at a minimum:
 - a. Be done at a DEA registered laboratory that uses validated methods and procedures for all testing activities, or at a laboratory that adheres to the standards of performance as outlined within the USDA Interim Final Rule of October 31, 2019, including the requirement to test for total THC employing post-decarboxylation or other similarly reliable methods;
 - b. Use post decarboxylation or other similarly reliable methods that meet applicable federal and Tribal standards, reliable methods include, but are not limited to gas or liquid chromatography with detection;
 - c. Consider the potential conversion of THCA in hemp into THC and the test result must reflect the total available THC derived from the sum of the THC and THCA content.
 - d. Determine the THC concentration level on a dry weight basis;
 - e. Ensure Samples of hemp plant material from one cultivation site shall not be commingled with hemp plant material from other cultivation sites;
 - f. Be sufficient at a confidence level of 95 percent that no more than one percent of the plants in the cultivation site would exceed the acceptable hemp THC level; and
 - g. Include the estimated measurement of uncertainty in the report.
2. Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the cultivation site represented by the sample is not in compliance with this Plan.

7.04 Pre-Harvest Sampling

1. A Licensee shall arrange for a Department official to collect a representative sampling of a cultivation site not more than fifteen (15) days prior to the expected harvest date of the cultivation site for the purpose of ensuring that the crop does not exceed permissible THC concentration levels on a dry weight basis.
2. A Licensee shall not remove any plants from a cultivation site that has not been sampled and tested for compliance in accordance with this Section.
3. The Licensee shall harvest the sampled crop not more than fifteen (15) days after sampling. If the Licensee does not harvest the crop within fifteen (15) days of sampling, the Department may re-sample the cultivation site at its discretion.

4. A Licensee may request additional testing if it is believed that the original THC concentration level tests were in error.
5. Any sample test result exceeding the acceptable THC level shall be conclusive evidence that the cultivation site represented by the sample is not in compliance with this part.

7.05 Compliant Plants:

1. The THC content for hemp produced on the reservation may not exceed .3%. If .3% or less is within the sample's measurement of uncertainty distribution range, the sample will be considered hemp for the purposes of this Plan.
2. Cultivation sites that meet the acceptable THC level may be harvested and made available for commercial sale.

7.06 Non-Compliant Plants:

1. All Hemp material with a THC content that tests higher than .3%, such that .3% or less is not within the sample's measurement of uncertainty distribution range, may not be further handled or processed, shall not enter into the stream of commerce and shall be promptly disposed of in a manner compliant with all applicable Department, Tribal federal laws, regulations and rules.
2. A non-compliant sample requires the destruction of the entire cultivation site represented by that sample.
3. The Licensee and Department shall arrange for an authorized law enforcement or Department officer to come to the Cultivation and collect the non-complaint hemp materials.
4. The Licensee shall cooperate with all Department instructions and requirements for non-complaint hemp collection prior to collection.
5. Once the non-complaint hemp material is collected, the Department official shall ensure the non-compliant hemp material is timely destroyed in a manner approved by the Department and that meets all applicable Tribal and federal requirements and standards.
6. The Licensee may not remove or harvest any non-complaint plant material from the cultivation site.

7.07 Recordkeeping

The Department must retain all documentation of sampling, testing, and non-compliant plant destruction for a period of at least three (3) calendar years.

7.08 Laboratory Reporting

1. Each Licensee must ensure that the registered laboratory that conducts the test of the sample(s) from its cultivation sites reports the test results for all samples tested to USDA.

Each test results report must contain the following information for each sample tested:

1. Licensee's license number;
2. Cultivation site identification number for the sample;
3. Name of Licensee;
4. Business address of Licensee;
5. Name and registration of laboratory;
6. Date of test and report;
7. Identification of a retest; and
8. Test result.

Section 8: Violations

8.01 Violations in General

A violation of this Plan shall be subject to enforcement solely in accordance with this Section.

8.02 Negligent Violation:

1. Below is a non-exclusive list of actions that constitute a negligent violation of this Plan:
 - a. Failing to provide an accurate legal description of any cultivation site;
 - b. Failing to obtain a license or other required authorization from the Department, as applicable; and
 - c. Producing hemp with a THC concentration of more than .3%, unless the Licensee took reasonable efforts to grow hemp and the cannabis produced does not have a THC concentration level of more than .5% on a dry weight basis.
2. A Licensee who negligently violates this Plan shall comply with a corrective action plan established by the Department to correct the negligent violation. Each corrective action plan shall include, at a minimum, the following terms:
 - a. A reasonable date by which the Licensee shall correct the negligent violation;
 - b. A requirement that the Licensee periodically report to the Department on its compliance within this Plan for a period of (2) calendar years from the date of the negligent violation; and
 - c. A statement that the Department shall conduct periodic inspections of the Licensee's cultivation sites to ensure that the plan has been implemented as submitted and continued compliance with the corrective action plan and this Plan.

3. A Licensee that negligently violates any State, Tribal, or USDA plan shall not, as a result of that violation, be subject to any criminal enforcement action by federal, state or Tribal officials.
4. A Licensee that negligently violates this Plan three (3) times in a five-year period shall be ineligible to produce hemp for a period of five (5) years beginning on the date of the third violation.

8.03 Other Violations

1. If the Department determines that the Licensee in the Tribe's jurisdiction has violated this Plan with a culpable mental state greater than negligence, the Department shall immediately report the Licensee to:
 - a. The United States Attorney General; and
 - b. The Chief Law Enforcement Officer of the Tribe.
2. Section 8.02 shall not apply to non-negligent violations.