



OMAHA TRIBE OF NEBRASKA

USDA TRIBAL HEMP PLAN

March 30, 2022

SECTION 51-12-1. USDA Hemp Production Program, Omaha Tribal Hemp Plan

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

The Omaha Tribe of Nebraska and Iowa Administrative offices are located in Macy, Nebraska. Eligible entities who grow hemp, process hemp, handle hemp, and all key participants and agents operating within the jurisdiction of the reservation are bound to all Omaha Tribe of Nebraska and Iowa Tribal laws, including ordinances, codes, policies and procedures. Any Hemp related business falls under the jurisdiction of The Omaha Tribe of Nebraska and Iowa and must adhere to this Tribal Hemp Plan and the laws of the Tribe for activities occurring within the Territory of the Indian Tribe.

SECTION 51-13-1. Plan Requirements

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

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

SECTION 51-14-1. Definitions

“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 State, Tribal, or USDA hemp plans 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.

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

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

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

“DEA” means Drug Enforcement Administration

“Disposal” means destroying non-compliant hemp using one of the USDA approved on-farm methods. Approved methods include plowing under, mulching / composting, disking, bush mowing, deep burial, and burning.

“Eligible Entity” means the Tribal Hemp Production Entity

“FSA” means the Farm Service Agency.

“GPS” means Global Positioning System.

“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 0.3 percent on a dry weight basis.

“Key Participant” means a person who is primarily responsible for the management, growth, or supervision of some part or all of the business involved in hemp production. Background checks are required for key personnel.

“Lot” refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, “lot” is to be defined by the producer in terms of farm location, field acreage, and variety (i.e., cultivar) and to be reported as such to the FSA.

“Marijuana” means cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent. This definition excludes “non compliant hemp”.

“Tribe” means the Omaha Tribe of Nebraska and Iowa.

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

“Negligent Threshold” means the threshold under which a producer is not considered to have committed a negligent violation if he/she made reasonable efforts to grow hemp and the cannabis does not have a total THC level of more than 1.0 percent on a dry weight basis.

“Non Compliant Hemp” means hemp grown in instances where the grower was fully attempting to grow hemp, but it went over the legal limit due to no fault by the grower.

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

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

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

“Remediation” means any process by which non-compliant hemp is rendered compliant. Remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds; or by shredding the entire hemp plant to create a homogenous “biomass” and then both options must be retested for THC compliance.

“Reservation” means within the Territory of the Indian Tribe as defined in 7 CFR 990.1.

“Registered land area” means a contiguous lot, parcel, or tract of land registered with The Omaha Tribe of Nebraska and Iowa on which a licensee may cultivate Hemp. A registered land area may include land and buildings that are not used to cultivate Hemp.

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

“Tribal Hemp Regulation Commission” means The Tribal entity accepting regulatory oversight of this Plan and all applicable regulations as a government agency of the Tribe.

“USDA” means the United States Department of Agriculture

SECTION 51-15-1. Eligibility and Production Record Keeping

A: Maintain relevant information regarding land on which Hemp is produced in territory of the Indian Tribe, including legal description of the land for a period of not less than 3 years.

The Tribe will collect, maintain and provide the USDA with contact information for key participants and will submit this information through the HeMP online system. The Tribe will ensure the annual crop report is submitted to FSA. The Tribe will maintain and report to USDA the status of any Tribal Hemp Production Entity and any changes to the key participants.

1. A legal description of the land on which hemp will be produced on the Reservation, including, to the extent practicable, its geospatial location; and
 2. All records and reports shall be maintained by the Tribe for at least three (3) years.
 3. The licensed producer will report crop acreage to the FSA with the Tribal Hemp Production authorization code; and
 4. The Tribe will ensure the growers are reporting to the FSA.
1. The Tribe will submit the required monthly USDA reports in accordance with 990.70(a)". Monthly reports will be submitted within 30 days/on the first of the month and through the new online HeMP platform. Further the Tribe will also submit the annual report through the new online HeMP platform due December 15.
 - 5.

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

Persons eligible to submit applications are only:

1. Must be 21 years and over
2. Must be a Tribal Member enrolled at the Omaha Tribe of Nebraska and Iowa
3. Key participants representing and/or working for the producer must have no felony convictions related to aggravated assault or drug related convictions within the past 10 years.

Any Persons growing Hemp is required to apply to the Omaha Tribe of Nebraska and Iowa for a license and must submit all required forms in the Tribal License Application Packet.

The application will include (for each key participant): Legal Name / Address / Telephone Number / Email Address / Current registered legal description of land area where Hemp will be produced, GPS location, or other land identifier used by Tribe and EIN number (if an entity).

The Tribe has established the following general requirements:

1. Full Application must be submitted with payment made for Tribal license processing fee
2. All Applicants are required to be fingerprinted and background check ran for statewide and nationwide criminal history check with every application submitted, including renewals.
3. The Tribe can choose to use the CLEAR background check, provided by the USDA or accept statewide and nationwide criminal history checks.
4. A license is good for up to 2 years and licensees will have to be in compliance with the Tribal Hemp Plan in order to be eligible to renew for another license term.
5. Licenses are non-transferable and not permitted for re-sale.
6. Licensees will report crop acreage to FSA with the corresponding license number included.
7. The Omaha Tribe of Nebraska and Iowa will retain for no less than three years all the information submitted as part of the Application Package.

SECTION 51-16-1. Testing and Sampling Procedures

B: Adhere to a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of Hemp produced in the territory of the Indian Tribe.

Tribal Inspections of Hemp Growing Sites:

- (a) The Tribe will conduct site visits for inspections of Hemp grown to ensure compliance with Tribal Hemp Ordinance and verify Hemp is not produced with any violations.
- (b) Inspections will be completed no less than one time annually and can be completed randomly and without notice.
- (c) The Tribe will have unrestricted access to the registered land area(s) and accompanying facilities.

Testing

1. After December 31, 2022, the Tribe will require the testing labs to be DEA registered.
2. In the meantime, the Tribe will utilize ISO 17025 accredited testing laboratories.
3. Testing methods for THC concentration will use:
 - a. The measurement of THC and THCA and the consideration of conversion of THCA into THC and report on a dry weight basis.
 - b. HPLC is the chromatography testing method we have selected.
 - c. Post decarboxylation method will be used.
4. The lab will use the measurement of uncertainty to determine the confidence interval around the THC threshold level of 1%. The measurement of uncertainty is included in the calculation for determining the acceptable hemp THC level. The measurement of

uncertainty and the % of THC in each test will be reported on the USDA Laboratory Test Results Page

5. Sample preparation of pre- or post-harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing.
6. Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part and shall be disposed of or remediated

The Lab will issue a laboratory test results report for each composite sample. The lab will submit compliance testing results directly to USDA.

The laboratory test report shall include the:

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

Sampling

The Tribe has established the following general guidelines to comply with sampling for the identification of total Delta-9 Tetrahydrocannabinol concentration in a “lot” of Hemp crop acreage, that the sampling guidelines are intended to provide a method used for sampling that ensure a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Sampling will be done no more than 30 days prior to harvest.

The sampler will collect individual specimens of plants in order to obtain a representative sample of Hemp in the designated lot. Hemp plants must not be harvested prior to the Hemp being sampled and tested for THC concentration. The Tribal designated sampler can be a Tribal employee appointed and trained by the Tribe for sampling or a trained sampler under contract. Producers cannot be samplers.

1. Fees for sampling will be paid by the producer.
2. No less than one key participant must be present at the growing site during sample collection.
3. The authorized sampler will have complete and unrestricted access during business hours to all Hemp plants and any land or buildings used for cultivation or handling of Hemp.
4. No hemp plants can be harvested prior to samples being taken and if the crop is harvested prior to sampling, will result in failure to comply with the Tribal Hemp Plan, resulting in

- ineligibility for production for 1 year.
5. All samples collected will be specifically labeled and sealed appropriately from one lot before moving to sampling the next lot. The sampler will seal each bag with the identification number. This procedure will ensure plant material from one lot will not be comingled with Hemp plant material from other lots.
 6. The designated sampler will be provided with necessary equipment and supplies:
 - a. Garden shears – appropriately cleaned
 - b. Sample paper bags, made from material that is THC free
 - c. Security tape
 - d. Permanent markers
 - e. Sample Collection forms
 - f. GPS Unit
 - g. Disposable gloves – nitrile
 7. The standard sampling protocol ensures, at a confidence level of 95 percent, that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensures that a collected sample represents a homogeneous composition of the lot.
 1. A key participant shall accompany the sampler throughout the sampling process.
 2. Surveillance of the lot.
 - 2.1. The sampler shall verify the GPS coordinates of the lot as compared with the GPS coordinates submitted by the licensee to USDA.
 - 2.2. The sampler shall estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the flowering material, meaning inflorescences (flowers/buds).
 3. Time of Sampling:
 - 3.1. Within 30 days prior to the anticipated harvest of Hemp plants, the sampler shall collect representative samples from such plants to be sent for THC concentration level testing. Any sampled lots not harvested within 30 days of sampling are required to be re-sampled prior to harvesting.
 4. Field Sampling:
 - 4.1. For purposes of determining the number of individual plants to select for sampling, the size of the lot shall be considered. For sampling purposes, samples from separate “lots” must be kept separate and not be comingled.
 - 4.2. For lots of less than one acre, including greenhouses, select a minimum of 1 plant, then take a cutting from the plant to form a sample. For lots of 2 to 10 acres, including greenhouses, select a minimum of one plant per acre, then take cuttings of each plant, then combine to form a composite sample.
 - 4.3. For lots larger than ten (10) acres, including greenhouses, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the Tribe of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.
 - 4.3.1. The sample size is estimated in a two-step process. The first step is to estimate

the number of primary plants to be sampled. The second step is to adjust the estimate of primary plants by the acreage under cultivation.

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

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

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

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

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

where n is the minimum number of primary plants to be selected for forming a composite sample, n_o is the initial number of primary plants, and N is the number of acres under cultivation.

6. Collecting Samples from each lot:

6.1. The sampler shall always walk at right angles to the rows of plants, beginning at one point of the lot and walking towards another point on the opposite side of the lot.

6.2. While walking through the lot, the sampler shall cut at least “ n ” flowering material, meaning inflorescences (the flower or bud of a plant) at random but convenient distances. Avoid collecting too many specimens from the borders of the field/greenhouse.

6.3. The cut shall include the top 5-8 inches of the main stem (including leaves and flowers), terminal bud (at end of stem), or central cola (cut stem that could develop into a bud) of the flowering top of the plant. The sample size must be of adequate volume to accommodate laboratory tests.

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

6.5. Seal each bag and record the sample number.

7. Sample identification:

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

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

SECTION 51-17-1. Disposal and Remediation

C: Adhere to a procedure for the effective disposal of products that are produced in violation of this subtitle.

The Omaha Tribe of Nebraska and Iowa has set forth guidelines to adhere to in regards to plant material that is produced in violation of the Farm Bill of 2018.

The Tribe has established the following remediation protocol for plants testing out of compliance:

If a lot tests above the acceptable hemp THC level, remediation can be done and the producer must notify the Tribal Hemp Regulation Commission. Remediation activities will be in accordance with the Remediation and Disposal Guidelines for Hemp Growing Facilities, issued January 15, 2021. Remediation will be done with non-compliant hemp (THC concentration $> 0.3\%$) with the intention to render compliant (THC concentration $\leq 0.3\%$). Remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds; or by shredding the entire hemp plant to create a homogenous “biomass” that can be retested for THC compliance.

1. Non-compliant hemp plants may be remediated by separating and destroying non-compliant flowers, while retaining stalks, leaves, and seeds, blending the entire plant into biomass material.
2. Non-compliant hemp plants may be remediated by shredding the entire hemp plant to create “biomass.” All flowers, buds, trichomes, leaves, stalks, seed, and all plant parts from a lot should be chopped or shredded in such a way as to create a homogenous, uniform blend of the lot called “biomass.” Lots should be kept separate and not be combined during this process. This biomass shall be resampled and retested to ensure the biomass material tests within an acceptable hemp THC concentration level before it may enter the stream of commerce in accordance with §990.3(d) and §990.27(c). If the biomass tests above the acceptable hemp THC concentration level is non-compliant hemp and must be destroyed through one of the disposal options provided herein.
3. Remediated plant material will be retested to ensure complaint THC level before entering commerce. If the plant material does not meet the acceptable hemp THC level, the material will be disposed of in accordance with the Remediation and Disposal Guidelines for Hemp Growing Facilities, issued January 15, 2021.

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

1. The Producer may dispose of the plants by one these options: plowing under, mulching/composting, disking, bush mower/chopper, deep burial, burning.
2. The Producer can make the decision on which disposal method based on the desired outcome.

3. The producer, once notified that they have produced product exceeding the acceptable Hemp THC level will arrange for disposal of the lot represented by the sample.
4. A verification process will be completed and signed off by an in-person site visit by the Tribe's designated sampling agent.
5. The Tribe will document the disposal of all lots that need to be disposed of. The Tribe will ensure the Tribal Hemp Disposal Report is submitted to the USDA for notification following the completion of the disposal process, and will include the test results.

SECTION 51-18-1. Collection of Information

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

Laboratory Tests Results Report to USDA – 30 days after the information is received
Annual Reports to the USDA with total planted acreage, total acreage disposed, and remediated and total harvested.

The following FSA data will be reported by the producer to FSA:

Crop Acreage Report (FSA 578) to the FSA – annual but only if planting has taken place,
reporting total acreage of Hemp planted, harvested, disposed and remediated
License number
Street address
GPS location of lot or greenhouse where Hemp is produced
Acreage of greenhouse or indoor square footage dedicated to the production of Hemp

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

SECTION 51-19-1. Enforcement of Procedures

D: Adhere to a procedure to comply with the enforcement procedures under subsection

The Omaha Tribe of Nebraska and Iowa has the authority through its Tribal Constitution and Tribal Sovereignty to adopt and enforce its own Tribal laws. The Tribe has the ability by Tribal law to enforce existing and additional rules governing its Hemp production and commercialization.

The Tribal Council will enforce the Tribe's regulations. The forms collected and all information entered on the forms will be used to maintain records and enforce procedures. Non-compliance

with any of the established regulations can result in immediate revocation of authorization, depending on violation and corrective action plan.

The Tribe will conduct audits and issue corrective action plans for negligent violations. Negligent violations by producers may lead to suspension or revocation of authorization. A Producer cannot receive more than one negligent violation per growing season. The Tribe will conduct both desk audits and site visit audits. When the Tribe visits a production site, they must have access to any fields, greenhouses, storage facilities or other locations where hemp is produced. The Tribe may also request records to include production and planting data, testing results, and other information as determined by Tribe.

The Tribe requires:

(a) The producer must report any changes of their contact information and/or key participants to the Tribe in writing within 14 calendar days of the change.

(b) *Planting Report*. Within 14 calendar days after planting any hemp, the producer shall submit a planting report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of hemp planted.

(c) *Pre-Harvest Notification*. At least 20 calendar days prior to harvest, the producer shall submit a pre-harvest notification, on a form provided by the Tribe. This will initiate the sampling process. The producer must notify the Tribe immediately of any changes in the reported harvest dates in excess of seven calendar days.

(d) *Post-Harvest Report*. Within 14 calendar days post-harvest, the producer shall submit a post-harvest report, on a form provided by the Tribe. The producer is not required to document the removal of male hemp plants on a post-harvest report if the male hemp plants are destroyed or utilized on the registered land area and are not transferred or sold.

The Omaha Tribe of Nebraska and Iowa will assert negligent violations on the producer to include:

1. Produces cannabis with a total THC concentration exceeding the acceptable hemp THC level (0.3% with MU.)

Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

2. Failure to provide legal description of land;
3. Failure to obtain a license
4. Failure to follow the regulations set forth by the Tribe;

A corrective action plan can include:

1. A reasonable date by which the producer shall correct the unintentional violation;
2. A requirement that the producer shall periodically report to The Omaha Tribe of

Nebraska and Iowa on the compliance of the corrective action plan for a period of not less than the next two calendar years;

The Omaha Tribe of Nebraska and Iowa will include in all corrective action plans:

1. A reasonable date by which the producer will correct the unintentional violation and reporting requirements for 2 years from the date of the negligent violations;
2. Provisions that if a negligent violation is found 3 times within a 5-year Period, the producer is ineligible to produce hemp for a period of 5 years from the date of the 3rd violation;
3. The Omaha Tribe of Nebraska and Iowa shall conduct inspections to determine if corrective action plan has been implemented; and

Negligent_Violations are not subject to other federal, state, tribal, or local government criminal enforcement action. However, the Tribe will report the production of hemp without authorization issued by the Tribe to the Tribal Law Enforcement. Hemp found to be produced in violation of this part, would be subject to the same disposal provisions as for cannabis testing above the acceptable hemp THC level. Further, if it is determined a violation was committed with a culpable mental state greater than negligence, the Tribe will report the violation to Tribal Law Enforcement and US Attorney General.

The Farm Bill of 2018 limited the participation of certain convicted felons in hemp production and provides for controlled substance felony conviction exception for participants in a state hemp pilot program authorized under the 2014 Agricultural Act before December 20, 2018. The Tribe has set forth that a person with a Tribal, State or Federal felony conviction is subject to a 10-year ineligibility restriction on producing hemp under the Act.

All key participants will undergo background checks prior to being issued a license.

SECTION 51-20-1. Ineligibility

- (1) If the producer is found to commit a negligent violation three times in a five-year calendar period it shall be ineligible to produce Hemp for a period of five calendar years beginning on the date of the third violation; AND
- (2) Any key participants convicted of a felony under Tribal, state or federal law cannot produce hemp for 10 years from the date of conviction;
- (3) Any key participant who materially falsifies any information in order to participate in the Program established under this plan shall be ineligible.

SECTION 51-21-1. Any other practice or procedure

Assignment of Tribal Authorization Numbers: A13380_0001, A13380_0002, A13380_003, etc.

The format is to be BIA Tribal Code _ License Number.