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# 2018 Farm Bill Policy Guide and Model Hemp Production Plan

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## INTRODUCTION

The *Agriculture Improvement Act of 2018* (the “**2018 Farm Bill**”) was signed into law on December 20, 2018. The 2018 Farm Bill, among other things, removes hemp (including any part of the cannabis plant containing 0.3% delta-9 THC or less), its extracts, derivatives, and cannabinoids from the *Controlled Substances Act of 1970*, and allows for federally-sanctioned hemp production under the purview of the United States Department of Agriculture (the “**USDA**”), in coordination with state departments of agriculture or Tribal governments that elect to have primary regulatory authority. States<sup>1</sup> and Tribal governments can adopt their own regulatory plans, even if more restrictive than Federal regulations, so long as the plans meet minimum federal standards and are approved by the USDA. After a State or Tribal government submits its plan, the United States Secretary of Agriculture (“**Secretary**”) has sixty (60) days to approve or disapprove of the plan. Hemp production in jurisdictions that do not choose to submit their own plans (and that do not otherwise prohibit hemp production) will be governed by USDA regulation. The USDA is promulgating rules for implementation of the new federally authorized program and will begin approving plans once the rules are finalized. However, Section 7606 of the *Agricultural Act of 2014* (the “**2014 Farm Bill**”) and the pilot programs adopted thereunder will remain authoritative until one (1) year after the USDA adopts rules to regulate hemp production in jurisdictions without USDA-approved State or Tribal hemp production plans, at which point the 2014 Farm Bill will be repealed.

During this time, State and Tribal authorities must consider the appropriate regulatory regime in the best interests of their residents and determine whether to: (1) permit or prohibit hemp production; and (2) retain (or obtain) primary regulatory authority over hemp production, or to defer primary authority to the USDA. This guide provides an outline of federal requirements and policy considerations applicable to State and Tribal regulation of hemp production, and a model hemp production plan intended to promote compliance with the 2018 Farm Bill minimum plan requirements.

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*The 2018 Farm Bill Policy Guide and Model Hemp Production Plan was produced by the American Hemp Campaign, a project of Vote Hemp, with support from the Vicente Sederberg law firm, VS Strategies, Agricultural Hemp Solutions, the American Herbal Products Association, and the U.S. Hemp Roundtable. It is intended to assist policymakers in the development of state regulatory regimes governing hemp production that meet minimum federal requirements. For more information, please contact lead author Shawn Hauser (303-860-4501, shawn@vicentesederberg.com), Vote Hemp President Eric Steenstra (703-729-2225, eric@votehemp.com), or Courtney Moran with Agricultural Hemp Solutions (888-388-4367, courtney@agriculturalhempolutions.com).*

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<sup>1</sup> Consistent with the 2018 Farm Bill, the term “State” is defined herein to include: (A) a state; (B) the District of Columbia; (C) the Commonwealth of Puerto Rico; and (D) any other territory or possession of the United States.

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## KEY POLICY POINTS

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The following are primary policy recommendations for State and Tribal governments to consider when developing a hemp program:

1. Define “hemp” in accordance with the 2018 Farm Bill but leave the definition open to changes that may occur in future federal legislation to ensure compliance with Federal law.
2. Amend the definitions of “marijuana” (or marihuana/cannabis), “tetrahydrocannabinols”, and “hashish”, as applicable, in the jurisdiction’s drug control statutes and/or criminal code to exclude hemp and products derived therefrom, in conformance with the 2018 Farm Bill amendments to the *Controlled Substances Act of 1970*.
3. Grant authority to the respective state department of agriculture to establish rules and a regulatory framework for the cultivation of hemp, as required by the 2018 Farm Bill minimum plan requirements.
4. Align licensing, registration, fees, cultivation, testing, inspection, and enforcement requirements with the minimum standards for a hemp production plan identified in the 2018 Farm Bill, outlined in more detail in the sections that follow. These requirements should address research and commercial production requirements as well as include procedures for licensing, testing, inspection, reporting, enforcement, and destruction, and/or retesting for any plants exceeding 0.3% delta-9 THC.
5. Leave jurisdiction over the manufacture and sale of hemp ingredients and finished hemp products to the appropriate state and federal agencies responsible for regulating the manufacturing and sale of similar commodities. For example, hemp-derived orally ingestible products should be regulated as food and/or dietary supplements, and hemp-derived topicals should be regulated as cosmetics.
6. Require delta-9 THC testing of hemp plants to ensure compliance with federal mandates and allow private testing labs that satisfy state-mandated criteria to conduct hemp and hemp product testing thereby reducing the need for state funding to perform such testing.
7. Establish or incorporate hemp into a domestic seed certification program, including a state licensing and/or registration program for seed breeders through institutions of higher education, and pursuant to the certification program established by the Association of Official Seed Certifying Agencies (“AOSCA”).
8. Allow phytocannabinoids, terpenes, and other plant compounds to be extracted from hemp pursuant to federal and state-mandated manufacturing requirements applicable to the intended finished-product-type to ensure such products are adequately tested and regulated.
9. Establish processes for institutions of higher education to cultivate hemp for research-related purposes on their property or the property of persons with whom they have a contract or Memorandum of Understanding.
10. Provide legal protections for the transport of raw hemp materials and finished products in compliance with Federal law.

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## 2018 FARM BILL MINIMUM REQUIREMENTS FOR HEMP PRODUCTION PLANS

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### ***Legislative Intent:***

“The [2018 Farm Bill] amends the Agricultural Marketing Act of 1946 to allow States [and Tribal governments] to regulate hemp production based on a state or tribal plan. The amendment requires that such plan includes information on locations of hemp production, testing for THC concentration, disposal of plants [and products] that are out of compliance, and [negligent] or other violations of the state or tribal plan.” ... “[S]tates and [T]ribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp or put in place policies that are less restrictive than this title.” (Committee Report on 2018 Farm Bill)

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### ***Minimum Plan Requirements:***

For the USDA to approve a hemp production plan, the plan must satisfy each of the following minimum requirements mandated by Section 10113 of the 2018 Farm Bill:

- I. “a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years[.]”
- II. “a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or the territory of the Indian tribe[.]”
- III. “a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle; and products derived from those plants [.]”
- IV. “a procedure to comply with the enforcement procedures under subsection (e)[.]”

“(e) VIOLATIONS.—

“(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

“(2) NEGLIGENT VIOLATION.—

“(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

“(i) failing to provide a legal description of land on which the producer produces hemp;

*“(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or*

*“(iii) producing Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.*

*“(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—*

*“(i) a reasonable date by which the hemp producer shall correct the negligent violation; and*

*“(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.*

*“(C) RESULT OF NEGLIGENT VIOLATION.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not as a result of that violation be subject to any criminal enforcement action by the Federal Government or any State government, Tribal government, or local government.*

*“(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.*

*“(3) OTHER VIOLATIONS.—*

*“(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—*

*“(i) the State department of agriculture or Tribal government, as applicable, shall immediately report the hemp producer to—*

*“(I) the Attorney General; and*

*“(II) the chief law enforcement officer of the State or Indian tribe, as applicable; and*

*“(ii) paragraph (1) of this subsection shall not apply to the violation.*

*“(B) FELONY.—*

*“(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction—*

*“(I) to participate in the program established under this section or section 297C; and*

*“(II) to produce hemp under any regulations or guidelines issued under section 297D(a).*

*“(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.*

*“(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section shall be ineligible to participate in that program.*

- V. “a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle [.]”
- VI. “a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received[.]”

*“(d) INFORMATION SHARING FOR LAW ENFORCEMENT.—*

*“(2) CONTENT.—The information collected by the Secretary under paragraph (1) shall include—*

*“(A) contact information for each hemp producer in a State or the territory of an Indian tribe for which—*

*“(i) a State or Tribal plan is approved under section 297B(b); or*

*“(ii) a plan is established by the Secretary under this section;*

*“(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and*

*“(C) for each hemp producer described in subparagraph (A)—*

*“(i) the status of—*

*“(I) a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or*

*“(II) a license from the Secretary; and*

*“(ii) any changes to the status.*

- VII. “a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi)[.]”<sup>2</sup>

The Secretary is authorized to provide technical assistance to States and Indian tribes to aid in the development of a state or tribal plan.

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<sup>2</sup> The 2018 Farm Bill amends the *Agricultural Marketing Act of 1946* (7 U.S.C. 1621 et. seq.) by adding to it Subtitle G - Hemp Production. Hemp production plan requirements are set forth in Section 297B(a)(2)(A) of that Act.

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## MODEL HEMP PRODUCTION PLAN<sup>3</sup>

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### **I. POLICY AND PURPOSE**

It is the declared policy of [STATE/TERRITORY] that Hemp is a valuable agricultural crop and commodity in [STATE/TERRITORY]. The purposes of this Chapter are to:

- A. promote the production of Hemp, and the development of new commercial markets for farmers and businesses through the sale of Hemp Products;
- B. enable the [DEPARTMENT/TRIBE], its Licensees, and affiliated Institutions of Higher Education, to conduct research regarding the production of Hemp in [STATE/TERRITORY];
- C. promote the [CREATION AND/OR EXPANSION] of this [STATE/TERRITORY]'s Hemp industry to the maximum extent permitted by law;
- D. encourage and empower research into Hemp production and the creation of Hemp Products at Institutions of Higher Education and in the private sector; and
- E. regulate Hemp as an agricultural commodity in compliance with Federal law.

### **II. DEFINITIONS**

- A. “**Applicant**” means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the [STATE/TRIBAL] Hemp Program.
- B. “**Commercial Sales**” means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the Internet.
- C. “**Commissioner**” means the [STATE/TERRITORY] Commissioner or Director of Agriculture.
- D. “**Consumable Product**” means a Hemp Product intended for human or animal consumption.
- E. “**Cultivate**” means to plant, water, grow, or harvest a plant or crop.
- F. “**Department**” means the [STATE/TERRITORY] Department of Agriculture.
- G. “**Federally Defined THC Level For Hemp**” means a THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis, or the THC concentration for Hemp defined in Federal law, whichever is greater.

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<sup>3</sup> The numbering, organization, and terminology utilized herein is suggestive and can be amended in accordance with the particular jurisdiction’s current regulatory structure.

- A. “GPS” means global positioning system.
- B. “Grow Site” has the same meaning as “Registered Land Area” as that term is defined in this Section, below.
- C. “Harvest Lot” means a quantity of Hemp, of the same Variety, harvested in a distinct timeframe that is: (1) Cultivated in one contiguous production area within a Grow Site; or (2) Cultivated in a portion or portions of one contiguous production area within a Grow Site. Harvest Lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.
- D. “Harvest Lot Identifier” means a unique identifier used by the [DEPARTMENT/TRIBE] to identify the Harvest Lot.
- E. “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 (0.3%) on a dry weight basis, or as otherwise defined in Federal law.
- F. “Hemp Crop” means one (1) or more unprocessed Hemp plants or plant parts.
- G. “Hemp Grower” means a Person licensed by the [DEPARTMENT/TRIBE] to Cultivate Hemp in this [STATE/TERRITORY].
- H. “Hemp Ingredient” means all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers of any part of the Hemp plant included in the definition of “Hemp.”
- I. “Hemp Product” means a finished product with the Federally Defined THC Level For Hemp, that is derived from, or made by, processing a Hemp Crop, and that is prepared in a form available for commercial sale. The term includes, but is not limited to cosmetics, personal care products, Consumable Products, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more Hemp Ingredients such as cannabidiol.
- J. “Industrial Hemp” has the same meaning as “Hemp” as that term is defined in this Section, above.
- K. “Institution of Higher Education” has the meaning assigned to it by 20 U.S.C. § 1001.
- L. “Intended for Consumption” means intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.
- M. “Licensee” has the same meaning as “Hemp Grower” as that term is defined in this Section, above.

- N. “**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 state or local government entity.
- O. “**Process**” means to convert any portion of a Hemp Crop into a Hemp Ingredient, Hemp Product, or other marketable form.
- P. “**Registered Land Area**” means a contiguous lot, parcel, or tract of land registered with the [DEPARTMENT/TRIBE] on which a Licensee Cultivates Hemp. A Registered Land Area may include land and buildings that are not used to Cultivate Hemp.
- Q. “**THC**” means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post-decarboxylation.
- R. “**Variety**” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

### III. COMPLIANCE WITH FEDERAL LAW

Nothing in this Chapter authorizes any Person to violate any Federal law or regulation.

### IV. [STATE/TRIBAL] HEMP PROGRAM

- A. Persons desiring to Cultivate Hemp must obtain a license from the [DEPARTMENT/TRIBE] prior to engaging in such activity.
- B. Persons seeking to Cultivate Hemp shall provide to the [DEPARTMENT/TRIBE] the legal description and GPS coordinates sufficient for locating the Registered Land Area and each field, greenhouse, or structure where the Person Cultivates Hemp, or intends to Cultivate Hemp.
- C. Notwithstanding any rule or regulation to the contrary, the inclusion of Hemp as an ingredient in a Consumable Product shall not by itself render the product misbranded or adulterated.

### V. APPLICATION FOR LICENSURE

- A. Any Person desiring to Cultivate Hemp at any location in [STATE/TERRITORY] shall submit to the [DEPARTMENT/TRIBE] annually a completed Hemp Grower license application.
- B. The Applicant shall submit a signed, complete, accurate and legible application form provided by the [DEPARTMENT/TRIBE] at least thirty (30) days prior to planting that includes the following information:
  - (1) full name, [STATE/TERRITORY] residential address, telephone number, and email address;



- (2) if the Applicant represents a business entity, the full legal entity name of the business, the principal [STATE/TERRITORY] business location address, the full name of the Applicant who will have signing authority on behalf of the entity, title, and email address of the Person;
  - (3) a completed criminal background check report for the Applicant on a form determined by the [DEPARTMENT/TRIBE] demonstrating that the Applicant does not have any disqualifying felony drug convictions pursuant to Subsection VI(A) of this Chapter;
  - (4) an application fee as set forth below;
  - (5) an acknowledgment of the licensing terms and conditions;
  - (6) a Grow Site registration application; and
  - (7) any other information or disclosure required to be submitted by Federal regulation.
- C. As a component of the Hemp Grower license application, each Applicant shall submit a Grow Site registration application on a form provided by the [DEPARTMENT/TRIBE] for each proposed Registered Land Area in which the Applicant intends to Cultivate Hemp. Information submitted to the [DEPARTMENT/TRIBE] must include, at a minimum:<sup>4</sup>
- (1) the street address and legal description of each field, greenhouse, building, or site where Hemp will be Cultivated;
  - (2) if Hemp is Cultivated or is intended to be Cultivated in a field:
    - (a) the GPS coordinates provided in decimal of degrees and taken at the approximate center of the Grow Site;
    - (b) the number of square feet or acres of each Grow Site; and
    - (c) a map of the production area showing clear boundaries of the Grow Site;
  - (3) if Hemp is Cultivated or is intended to be Cultivated in a greenhouse or other building:
    - (a) the GPS coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building composing the Grow Site;

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<sup>4</sup> **2018 Farm Bill State Plan Requirement #1:** “a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years[.]”

- (b) the approximate dimension or square feet of the greenhouse or other building composing the Grow Site; and
  - (c) a map of the production area showing clear boundaries of the Grow Site.
- (4) The [DEPARTMENT/TRIBE] may approve an Applicant to Cultivate an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the Grow Site registration application.
- D. Applicants must have the legal right to produce Hemp on the Registered Land Area and the legal authority to grant the [DEPARTMENT/TRIBE] access for inspection and sampling.
- E. By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:
  - (1) any information provided to the [DEPARTMENT/TRIBE] may be provided to law enforcement agencies without further notice to the Applicant;
  - (2) the Applicant or Licensee shall allow and fully cooperate with any inspection and sampling that the [DEPARTMENT/TRIBE] deems necessary;
  - (3) the Applicant or Licensee shall pay for any inspection and laboratory analysis costs that the [DEPARTMENT/TRIBE] deems necessary within thirty (30) days of the date of the invoice, provided that the Licensee shall not be required to pay for more than one (1) [DEPARTMENT/TRIBE]-inspection and associated laboratory analysis costs per year;
  - (4) the Applicant or Licensee shall submit all required reports by the applicable due-date specified by the Commissioner;
  - (5) applicants shall submit fingerprints and pay criminal background check fees directly to the [STATE/TERRITORY] Police or other law enforcement agency designated by the [DEPARTMENT/TRIBE], to obtain a criminal history background check report; and
  - (6) the Applicant or Licensee must report any felony convictions relating to controlled substances under state or Federal law to the [DEPARTMENT/TRIBE] within five (5) business days of receiving notice of such conviction.<sup>5</sup>

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<sup>5</sup> Model plan provisions relating to criminal background checks, program participation eligibility, and required disclosures and reporting are based on the enumerated requirements set forth in the 2018 Farm Bill and may be subject to change if necessary to comply with USDA rules which have not yet been promulgated. Further clarity in USDA regulation is necessary to determine the scope and necessity of required disclosures and reporting relating to criminal background checks and program participation eligibility criteria.

- F. All licenses issued shall be valid for one (1) year from date of issuance, unless otherwise extended, or revoked at an earlier date pursuant to Section VI or other [DEPARTMENT/TRIBE]-issued rule.
- G. Current and valid licenses may be renewed annually or as otherwise determined by the [DEPARTMENT/TRIBE] by submitting a renewal application to the Commissioner on a form provided by the [DEPARTMENT/TRIBE] no later than thirty (30) days prior to the date of the license expiration.

## **VI. ELIGIBILITY**

- A. Any Person convicted of a felony relating to a controlled substance under state or Federal law shall be ineligible, during the ten (10)-year period following the date of the conviction, to receive licensure as a Hemp Grower in the State Hemp Program, unless that Person was already licensed, registered, or authorized to produce Hemp in this jurisdiction prior to January 1, 2019.<sup>6</sup>
- B. A Licensee that negligently violates this Chapter three (3) times in a five (5) year period shall be ineligible to participate in the [STATE/TRIBAL] Hemp 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 the [STATE/TRIBAL] Hemp Program shall be ineligible to participate in the [STATE/TRIBAL] Hemp Program.

## **VII. FEES**

- A. In addition to submitting a Hemp Grower license application, each Applicant shall submit the application fee set by the [DEPARTMENT/TRIBE].
- B. The [DEPARTMENT/TRIBE] 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 [STATE/TRIBAL] Hemp Program.
- C. Application fees shall not cover or include the cost of obtaining and submitting a criminal background check report.

## **VIII. INSPECTIONS<sup>7</sup>**

- A. The [DEPARTMENT/TRIBE] shall have authority to conduct random inspections of Hemp Growers and all Registered Land Areas to verify compliance with all requirements of the license issued. Inspection may include sampling by [DEPARTMENT/TRIBE] inspectors for testing to determine Hemp or Hemp Product THC levels or any other [DEPARTMENT/TRIBE]-defined purpose.

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<sup>6</sup> See footnote 5.

<sup>7</sup> **2018 Farm Bill State Plan Requirement #5:** “a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle[.]”

- B. Inspection visits may be conducted at any time during regular business hours. Inspectors shall be granted unrestricted access to the Registered Land Area(s).
- C. All samples collected by the [DEPARTMENT/TRIBE] shall become the property of the [DEPARTMENT/TRIBE] and no compensation shall be owed by the [DEPARTMENT/TRIBE] for such samples.
- D. The [DEPARTMENT/TRIBE] shall keep test results for all Hemp and Hemp Products tested for a minimum of three (3) years.

**IX. LAND USE RESTRICTIONS AND SITE MODIFICATION**

- A. A Licensee shall not Cultivate Hemp on any site not listed in a valid [DEPARTMENT/TRIBE]-approved Grow Site registration.
- B. Any Licensee that wishes to alter its Registered Land Area shall, before altering the Registered Land Area, submit to the [DEPARTMENT/TRIBE] an updated legal description, GPS location, and map specifying the proposed alterations on a form determined by the [DEPARTMENT/TRIBE]. No modifications to the Registered Land Area may be made without prior written approval to the [DEPARTMENT/TRIBE].
- C. No Registered Land Area may be included in more than one (1) Grow Site registration at the same time, and no Hemp plant shall be included in more than one (1) Grow Site registration simultaneously.

**X. TRANSPORTATION REQUIREMENTS**

The Licensee or other Person responsible for the transportation of a Hemp Crop must ensure that the following documentation accompanies the Hemp Crop at all times during transport:

- A. a copy of the Hemp Grower license that corresponds to the Registered Land Area from which the Hemp originated;
- B. a copy of the pre-harvest test results that correspond to the Harvest Lot in transit as identified by the Harvest Lot Identifier that accompanies the Hemp;
- C. a copy of a transport manifest that includes all information required to be documented by the [DEPARTMENT/TRIBE]; and
- D. any other documentation that may be required by the [DEPARTMENT/TRIBE] or the USDA.

**XI. COMPLIANCE AND ENFORCEMENT**

- A. Licenses cannot be assigned or transferred to another Person, unless first approved by the [DEPARTMENT/TRIBE] in writing.

- B. Hemp Growers shall provide the [DEPARTMENT/TRIBE]'s inspector complete and unrestricted access to all plants, parts, and seeds within a Registered Land Area, 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 Licensee's Hemp business.

## **XII. REQUIRED RECORDKEEPING AND REPORTING**<sup>8</sup>

A. [DEPARTMENT/TRIBE] Recordkeeping and Reporting:

- (1) The [DEPARTMENT/TRIBE] shall retain for a period of at least three (3) calendar years, all information required to be collected by Section V of this Chapter, for every Registered Land Area approved by the [DEPARTMENT/TRIBE].
- (2) Within thirty (30) days after the date on which the information is received, the [DEPARTMENT/TRIBE] shall submit to the U.S. Secretary of Agriculture the following information for each Hemp Grower in the State:
  - (a) contact information for each Hemp Grower, including the legal entity name, full name of all authorized representatives, the street address of each Registered Land Area, the business telephone number, and email address of each Licensee;
  - (b) a legal description of the Registered Land Area; and
  - (c) the status of a license or other required authorization from the [DEPARTMENT/TRIBE].

B. Licensee Recordkeeping and Reporting:

- (1) Hemp Growers must report any changes of contact information to the [DEPARTMENT/TRIBE] in writing within fourteen (14) days of the change.
- (2) Planting Report: Within fourteen (14) days after planting any Hemp, each Hemp Grower shall submit, on a form provided by the Commissioner, a Planting Report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of Hemp planted.
- (3) Pre-Harvest Notification: At least fourteen (14) days prior to harvest, each Hemp Grower shall submit a Pre-Harvest Notification, on a form provided by the Commissioner that includes the projected harvest date(s) and location(s) of each Variety of Hemp Cultivated within a Registered Land Area. A Hemp Grower

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<sup>8</sup> **2018 Farm Bill State Plan Requirement #1 continued:** “a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years[.]”

must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of seven (7) days.

- (4) Post-Harvest Report: Within fourteen (14) days post-harvest, each Hemp Grower shall submit a Post-Harvest Report, on a form provided by the Commissioner that includes the actual harvest date(s) and location(s) of each Variety of Hemp harvested within a Registered Land Area. A Hemp Grower is not required to document the removal of male Hemp plants on a Post-Harvest Report provided that the male Hemp plants are destroyed or utilized on the Registered Land Area and are not transferred or sold.
- (5) A Hemp Grower must retain all documentation of sampling and testing for at least three (3) years in a manner such that it can be readily provided to the [DEPARTMENT/TRIBE] upon request.

### **XIII. PROCEDURE FOR SAMPLING AND TESTING**<sup>9</sup>

- A. A Hemp Grower must arrange for and ensure the sampling of each Harvest Lot no more than twenty-eight (28) days prior to harvest for the purpose of ensuring that the Harvest Lot does not exceed permissible THC concentration levels on a dry weight basis.
- B. A Hemp Grower shall not remove a Harvest Lot from a Registered Land Area that has not been sampled and tested for compliance in accordance with this Section.
- C. Compliance and safety testing for Hemp and Hemp Products required by these rules shall be conducted by independent laboratories accredited to ISO/IEC 17025, the standard published by the International Organization for Standardization (the “ISO”) titled “General requirements for the competence of testing and calibration laboratories,” or an accreditation standard approved by the [DEPARTMENT/TRIBE].
- D. Except for samples collected by the [DEPARTMENT/TRIBE] for compliance, inspection, and auditing purposes, all samples collected to determine compliance with these rules shall be collected by the Hemp Grower, laboratory employees, or third-party contractors in accordance with procedures for statistical representation established by the [DEPARTMENT/TRIBE] in consultation with relevant government, public health, and industry experts.
- E. For each sample tested pursuant to this Section, the Hemp Grower shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:
  - (1) 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;

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<sup>9</sup> **2018 Farm Bill State Plan Requirements #2**: “a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or the territory of the Indian Tribe[.]”

- (2) the date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
  - (3) the THC concentration contained in the test sample; and
  - (4) a statement indicating whether the sample contained a THC concentration of not more than the Federally Defined THC Level For Hemp.
- F. The required number and size of samples shall be determined in accordance with [DEPARTMENT/TRIBE] established procedures for statistical representation.
  - G. Nothing in this Section shall prevent a Hemp Grower from voluntarily collecting samples and testing Hemp for quality assurance and research and development purposes.
  - H. A Hemp Grower may apply to the [DEPARTMENT/TRIBE] for retesting and/or resampling of any non-compliant Harvest Lot, which may be approved or denied at the [DEPARTMENT/TRIBE]'s discretion.

**XIV. PROCEDURE FOR DISPOSAL OF NON-COMPLIANT PLANTS AND PRODUCTS<sup>10</sup>**

- A. Hemp that tests higher than the Federally Defined THC Level For Hemp shall be disposed of by the Hemp Grower in compliance with [DEPARTMENT/TRIBE] rules and all applicable federal, state and local laws, regulations, rules and other requirements.
- B. If a Harvest Lot tests higher than the Federally Defined THC Level For Hemp the Harvest Lot shall be promptly disposed of by the Hemp Grower according to the following disposition:
  - (1) Hemp stalks (denuded) may be harvested, processed and used for fiber and/or any other lawful purpose; and
  - (2) Hemp seed may be harvested, Processed, and rendered non-viable for food products, provided it is sourced from Hemp grown with seed certified pursuant to the [DEPARTMENT/TRIBE]'s Seed Certification Program, or that has otherwise received certification by other seed agencies recognized by the [DEPARTMENT/TRIBE].
- C. All Hemp plant material not disposed of pursuant to XIV(B)(1) and (B)(2) must be destroyed or utilized on site in a manner approved of and verified by the [DEPARTMENT/TRIBE].

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<sup>10</sup> **2018 Farm Bill State Plan Requirement #3:** “a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle; and products derived from those plants[.]”

- D. Hemp Growers shall have fourteen (14) calendar days from the date of notification of test results higher than the Federally Defined THC Level For Hemp to contact the [DEPARTMENT/TRIBE] in writing and apply for retesting or propose a method for destruction or on-site utilization. Methods of destruction or on-site utilization may include, but are not limited to, incineration, composting, tilling into the soil, or grazing by livestock.
- E. Hemp subject to destruction or on-site utilization pursuant to this Section shall not be removed from the Registered Land Area unless otherwise authorized by the [DEPARTMENT/TRIBE].
- F. With the exception of Hemp seeds rendered non-viable pursuant to this rule, all Hemp subject to destruction or on-site utilization pursuant to this rule shall not be added to or Processed into any Consumable Product.
- G. The Hemp Grower shall provide any and all evidence requested by the [DEPARTMENT/TRIBE] to verify disposal to the satisfaction of the [DEPARTMENT/TRIBE].

**XV. VIOLATIONS<sup>11</sup>**

- A. A violation of this Chapter shall be subject to enforcement solely in accordance with this Section.
- B. Negligent Violation.
  - (1) A Hemp Grower shall be subject to Section XV(B)(2) if the [DEPARTMENT/TRIBE] determines that the Hemp Grower has negligently violated the requirements of this Chapter, including by negligently:
    - (a) failing to provide a legal description of land on which the Hemp Grower Cultivates Hemp;
    - (b) failing to obtain a license or other required authorization from the [DEPARTMENT/TRIBE], as applicable; and
    - (c) producing *Cannabis sativa* L. with a THC concentration of more than the Federally Defined THC Level For Hemp.
  - (2) A Hemp Grower described in this Section XV(B)(1) shall comply with a plan established by the [DEPARTMENT/TRIBE] to correct the negligent violation, including:

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<sup>11</sup> **2018 Farm Bill State Plan Requirement #4:** “a procedure to comply with the enforcement procedures under subsection (e)[.]”



- (a) a reasonable date by which the Hemp Grower shall correct the negligent violation; and
  - (b) a requirement that the Hemp Grower shall periodically report to the [DEPARTMENT/TRIBE] on the compliance of the Hemp Grower with this Chapter for a period of not less than the next two (2) calendar years.
- (3) A Hemp Grower that negligently violates this Chapter under Section XV(B)(1) shall not, as a result of that violation, be subject to any criminal enforcement action by the Federal Government or any State government, Tribal government, or local government.
  - (4) A Hemp Grower that negligently violates this Chapter under Section XV(B)(1) three (3) times in a five (5)-year period shall be ineligible to produce Hemp for a period of five (5) years beginning on the date of the third violation.

C. Other Violations.

- (1) If the [DEPARTMENT/TRIBE] determines that a Hemp Grower in the [STATE/TERRITORY] has violated this Chapter with a culpable mental state greater than negligence, the [DEPARTMENT/TRIBE] shall immediately report the Hemp Grower to:
  - (i) the United States Attorney General; and
  - (ii) the [CHIEF LAW ENFORCEMENT OFFICER OF THE STATE/TERRITORY/TRIBE]; and
- (2) Section XV(A) shall not apply to the violation.

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**SAMPLE CERTIFICATION**

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[INSERT DEPARTMENT OF AGRICULTURE LETTERHEAD]

**Hemp Program Certification**

by [Insert Commissioner of Agriculture's Full Name],  
Commissioner of Agriculture

Pursuant to Section 297B(a)(2)(A)(vii) of the Agriculture Improvement Act of 2018, I certify that the [INSERT JURISDICTION] Department of Agriculture has the resources and personnel necessary to carry out each of the practices and procedures identified in Section 297B(a)(2) of the Act.

Date: [INSERT DATE]

**Respectfully,**

[Signature of Commissioner]

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**STATES WITHOUT CURRENT HEMP LEGISLATION**  
*Suggested Department of Agriculture Responsibilities and Authorizations*

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**I. RESPONSIBILITIES OF THE DEPARTMENT**

- A.** The Department shall adopt rules for the purpose of administering this Chapter, to bring about uniformity between the standards for Hemp production established under this Chapter and the standards established by Federal law, including but not limited to, *the practices and procedures described in (i) through (vi) of Sec. 297B(2)(A) of the Agricultural Marketing Act of 1946 as amended in Section 10113 of the 2018 Farm Bill.*
- B.** In addition to any other powers vested in it by law, the Department shall have the authority and power to promulgate administrative regulations, in consultation with relevant public agencies and private industry associations that promote standards, best practices and self-regulation. These regulations shall:
- (1) prescribe rules for licensing persons who wish to participate in the State Hemp Program;
  - (2) prescribe rules for an Institution of Higher Education's participation in, or affiliation with, the State Hemp Program;
  - (3) prescribe inspection, sampling, and testing procedures to ensure that Hemp and Hemp Products produced under the authority of this Chapter do not exceed the THC compliance threshold, and provide for an appeal process to protect Licensees against inaccurate test results;
  - (4) prescribe enforcement rules and a penalty schedule for violations of any provision of this Chapter or an administrative regulation, and provide fair due process for participants in the State Hemp Program;
  - (5) prescribe a schedule of reasonable non-refundable fees for administering the State Hemp Program, including license application and renewal fees, and plant sample and testing fees in amounts comparable to fees associated with the production of other crops; and
  - (6) prescribe rules for record retention, maintenance, and reporting by Licensees and the Department; and
  - (7) collect, retain, and report information about the land on which Hemp is produced.
- C.** Authority to regulate the manufacture of Hemp Ingredients and/or Hemp Products shall be accorded to the state agency responsible for regulation of the commodity to which the Hemp Product is most alike, or as otherwise determined by the Department;

however, any regulations adopted by the Department or such other agencies must, at a minimum reflect the following principles:

- (1) the inclusion of Hemp as an ingredient in a Consumable Product shall not by itself render the product misbranded or adulterated;
- (2) the Department of Health (or other appropriate state agency) shall make available any and all customary authorizations to any Person which Cultivates or Processes Hemp;
- (3) Hemp Products may be legally transported consistent with U.S. Federal law and the laws of the respective foreign nations, as applicable; and
- (4) retailers of Hemp Products shall be provided fair notice of potential violations, as well as due process and opportunities to cure violations if made unintentionally or negligently.