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**FREDERICKS PEEBLES & PATTERSON LLP**  
ATTORNEYS AT LAW

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**MEMORANDUM**

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**FROM:** Fredericks Peebles & Patterson LLP  
**DATE:** November 22, 19  
**RE:** Update on the New Hemp Regulations

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In the Agriculture Improvement Act of 2018, Congress removed Hemp, defined as Cannabis L with a combined THC and THCA content of .3% or less on a dry weight basis, from the Controlled Substance Act. Cannabis that tests higher than that .3% is still classified as marijuana, and its possession, cultivation or transportation remains subject to federal prosecution.

In a subsequent section of the 2018 Act, Congress reclassified hemp as a federally controlled crop that requires a federal license to grow. It thereby made it unlawful to cultivate or handle hemp without that federal license. The Authority to oversee domestic hemp activities, and issue federal hemp licenses, was delegated to the U.S. Secretary of Agriculture.

Under this authority, the Secretary of Agriculture has established a hemp oversight division, as well as a federal hemp licensing division in the USDA. It is this USDA hemp licensing division that is authorized today to issue federal hemp cultivation licenses to any

individual or company that applies, meets a list of specific background criteria, and agrees to abide by the cultivation and reporting requirements that come with that license and these new federal regulations.

Of importance to Tribes is the fact that the Agriculture Improvement Act of 2018 also authorized the Secretary of Agriculture to delegate this federal hemp licensing and regulatory authority to those federally recognized tribes which choose to submit, and receive approval of, their own individual Tribal Hemp Regulatory Plan.

These tribal plans must meet a fairly long, and complicated list of federal statutory and regulatory requirements, all of which are spelled out in USDA's Final Initial Hemp Rules promulgated and released on October 28, 2019. Tribes should be advised, however, that these regulations are accompanied by over 155 pages of supplemental materials in which their regulatory terms and procedures are further explained. These supplement materials cover, in great detail, how the tribal regulatory process must address everything from seed acquisition, to pre-cultivation sampling, to hemp testing requirements, to geospatial site identification procedures. Additionally, since this is a national undertaking, a tribal Plan which fails to comply with these additional requirements will probably not get approved.

FPP encourages all tribes to review all of these supplemental materials carefully, including those that were not published in the Federal Register. This is of critical importance because the final regulations alter many of the expectations that most tribes had about what these regulations were going to require, and because these regulations alter many of the procedures currently being employed by Tribes who have been growing hemp under a State pilot program.

FPP has performed a highly detailed analysis of these materials and has prepared and submitted for one of our clients, what became the first comprehensive tribal plan for federal

approval since the new regulations were issued on October 28th. That Plan has already been through the USDA review process, and the USDA personnel assigned to review it are recommending the Secretary's approval of that plan. If all goes well, we should have that final approval letter before the end of November.

Tribes that are interested in developing their own tribal hemp regulatory plans must act quickly if they hope to be licensed growers for the 2020 growing season. Complying with these new regulations will take time and it will require the Tribe to reach a variety of agreements with: local USDA Farm Service Agency representatives, local law enforcement, local U.S. DEA, and special certified testing labs and seed or plant providers.

Additionally, Tribes who are currently producing hemp under a 2014 Farm Bill Pilot Program need to be aware that Congress has terminated all of those pilot programs effective October 28, 2020. And, as noted above, Tribes also need to be aware that even after their new tribal plan is approved, they may still not be able to use the same seeds, testing labs and the same land description and reporting procedures that they are currently utilizing. Making these changes will take time, and will require a lot of coordination with the USDA. So please do not hesitate.

Finally, it is important for all tribes to remember that at of the end of this month (November 2019), the USDA will be starting to issue hemp cultivation licenses to individual Indians and non-Indians even on your home reservation, unless the Tribe submits a formal notice to the USDA advising it that the Tribe will be submitting its own hemp Plan to the USDA in the near future. Because the regulations have just come out, the USDA has agreed to give tribes 30 days to notify them of the tribe's intent to submit a plan to exercise tribal jurisdiction over all hemp cultivation in the Tribe's territory. That thirty days expires at the end of November 2019. Once that notice is received, the USDA has agreed to refrain from issuing licenses on the Tribe's

reservation to private individuals and companies for a reasonable amount of time to allow the tribe to develop and submit an approval plan.

While these new federal hemp requirements are far more complicated than we had hoped, and give the DEA far more authority that we believe appropriate, the fact remains that they are legally in place today and they will remain in place until they are changed by the USDA or the Congress sometime in the future.

For further information on how your tribe should approach these efforts, please feel free to call FPP's Washington D.C. Office and speak with FPP attorneys Patty Marks or Ben Fenner.

Patty and Ben can both be reached at 202-450-4887 or as follows:

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