

Santee Sioux Nation

Chairman: Roger Trudell
Vice-Chairman: Sidney Tuttle
Treasurer: Derek LaPointe
Secretary: Stuart Redwing



Hobu Rep: Marion Brandt
Howe Rep: LeeAnn Payer
Santee Rep: Devin Henry
Bazile Rep: Jon Johnson

February 5, 2020

Via email to farmbill.hemp@usda.gov

Sonia Jimenez
Deputy Administrator
Specialty Crops Program
USDA Agricultural Marketing Service
1400 Independence Avenue SW
Room 2077-S, Stop 0235
Washington, D.C. 20250-0235

Re: Submission of the Second Amended Santee Sioux Nation Hemp Plan Pursuant to the Agricultural Improvement Act of 2018

Dear Deputy Administrator Jimenez:

I am the duly-elected Chairman of the Tribal Council for the Santee Sioux Nation ("Tribe" or "Nation"), a federally-recognized Indian tribe, 83 Fed. Reg. 4235, 4238 (Jan. 30, 2018), which is organized pursuant to Section XVI of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified at 25 U.S.C. §§ 476, *et seq.*, as amended by the Act of June 15, 1935, (49 Stat. 378).

The Nation is pleased that the U.S. Congress enacted the Agricultural Improvement Act of 2018 (the "Act" or "Farm Bill"), which amended the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled "Hemp Production," thereby allowing for the controlled cultivation of hemp in accordance with the Act and a Tribal plan approved by the Secretary of Agriculture. With the hemp provisions of the 2018 Farm Bill, the production of hemp now represents a vital economic opportunity for the Tribe and its members.

Santee Sioux Nation

Chairman: Roger Trudell
Vice-Chairman: Sidney Tuttle
Treasurer: Derek LaPointe
Secretary: Stuart Redwing



Hobu Rep: Marion Brandt
Howe Rep: LeeAnn Payer
Santee Rep: Devin Henry
Bazile Rep: Jon Johnson

On April 2, 2019, the Nation submitted its Tribal Plan, including the Nation's Industrial Hemp Ordinance, to the USDA pursuant to the Act. Subsequently, on October 31, 2019, the USDA published its Interim Final Rule for the Establishment of a Domestic Industrial Hemp Program ("Interim Final Rule"), including provisions for the USDA to approve Tribal Plans for the production of Hemp pursuant to the Act. In response to the Interim Final Rule, the Tribal Council of the Santee Sioux Nation adopted an Amended Industrial Hemp Ordinance to conform to the provisions of the Interim Final Rule, and submitted its Amended Industrial Hemp Ordinance to the USDA on December 13, 2019.

The USDA Office of General Counsel has requested edits to the Amended Industrial Hemp Ordinance, and the Tribal Council has incorporated such edits into the Second Amended Industrial Hemp Ordinance, and enacted the Second Amended Industrial Hemp Ordinance by resolution of the Tribal Council as part of its Amended Tribal Plan pursuant to the provisions of the Act and the Interim Final Rule, and respectfully requests that you approve its Hemp Plan within 60 days, as is required by the Act.

Attached hereto is a copy of the Santee Sioux Nation's Second Amended Industrial Hemp Ordinance which was approved by Resolution of the Tribal Council on February 5, 2020. The Second Amended Ordinance, along with the other materials attached hereto, constitute the Tribe's Hemp Plan pursuant to the Act and the Interim Final Rule.

I believe that this submission provides all of the information that is necessary for you to approve the Santee Sioux Nation's Industrial Hemp Plan within the 60-day period prescribed by law.

If you have any questions about the Santee Sioux Nation's Industrial Hemp Plan, or would like to request additional information, please do not hesitate to contact the Nation's legal counsel, Conly J. Schulte, at conly@cschultelaw.com, or (402) 541-4590.

Santee Sioux Nation

Chairman: Roger Trudell
Vice-Chairman: Sidney Tuttle
Treasurer: Derek LaPointe
Secretary: Stuart Redwing



Hobu Rep: Marion Brandt
Howe Rep: LeeAnn Payer
Santee Rep: Devin Henry
Bazile Rep: Jon Johnson

Respectfully,

Roger Trudell, Chairman

Santee Sioux Nation

Attachments:

Santee Sioux Nation Resolution Adopting Second Amended Industrial Hemp Ordinance

Second Amended Santee Sioux Nation Industrial Hemp Ordinance

Certification by Chairman Roger Trudell

A handwritten signature in black ink, appearing to read "Roger Trudell".

cc: Santee Sioux Nation Tribal Council

Santee Sioux Nation Industrial Hemp Commission

Conly J. Schulte, Esq.

SANTEE SIOUX NATION
SECOND AMENDED INDUSTRIAL HEMP ORDINANCE
Amended February 5, 2019

TABLE OF CONTENTS

| | |
|--|----|
| SECTION 1 - GENERAL PROVISIONS | 5 |
| A. Short Title. | 5 |
| B. Findings and Purpose..... | 5 |
| C. Control of Hemp. | 6 |
| D. Sovereign Immunity..... | 6 |
| SECTION 2 - DEFINITIONS | 6 |
| SECTION 3 – HEMP AUTHORIZED..... | 12 |
| A. Exemption from Prosecution for Certain Acts..... | 12 |
| SECTION 4 - HEMP REGULATORY COMMISSION..... | 12 |
| A. Establishment; Attributes..... | 12 |
| B. Composition; Term of Office..... | 12 |
| C. Removal; Vacancies..... | 13 |
| D. Training, Equipment; Staff. | 13 |
| E. Sovereign Immunity..... | 13 |
| F. Powers of the Commission. | 14 |
| G. Executive Director; Qualifications; Powers..... | 15 |
| H. Powers and Duties of the Executive Director. | 15 |
| I. Compensation of the Executive Director. | 16 |
| J. Quarterly Reports..... | 16 |
| K. Review of Decisions. | 16 |
| SECTION 5 – LICENSING APPLICATION | 16 |
| A. Producer License Application..... | 16 |
| B. Criminal History Reports..... | 18 |
| C. Hemp Producers; Operating Fee..... | 18 |
| SECTION 6 - LOCATION OR LAND PERMIT..... | 19 |
| A. Location or Land Permit Requirements..... | 19 |
| SECTION 7 - PRODUCER LICENSING AGREEMENTS | 20 |
| A. Producer Licensing Agreement Contents. | 20 |
| SECTION 8 - SITE MODIFICATIONS | 22 |

| | |
|--|----|
| A. Site Modifications..... | 22 |
| SECTION 9 – SEED ACQUISITION WITHIN THE UNITED STATES..... | 22 |
| A. Seed Acquisition Within the United States..... | 22 |
| SECTION 10 – SEED ACQUISITION FROM A SOURCE OUTSIDE OF THE UNITED STATES | 23 |
| A. Seed Acquisition from a Source Outside of the United States. | 23 |
| SECTION 11 – SEEDS OF WILD, LANDRACE, OR UNKNOWN ORIGIN | 23 |
| A. Seeds of Wild, Landrace, or Unknown Origin. | 23 |
| SECTION 12 – PRODUCER PLANTING REPORTS FOR OUTDOOR PLANTINGS | 24 |
| A. Planting Reports for Outdoor Plantings..... | 24 |
| SECTION 13 – PRODUCER PLANTING REPORTS FOR INDOOR PLANTINGS | 24 |
| A. Planting Reports for Indoor Plantings..... | 24 |
| SECTION 14 – PESTICIDE USE | 25 |
| A. Pesticide Use..... | 25 |
| SECTION 15 – SITE ACCESS FOR REPRESENTATIVES OF THE COMMISSION AND LAW ENFORCEMENT AGENCIES | 25 |
| A. Site Access for Representatives of the Commission and Law Enforcement Agencies. | 25 |
| SECTION 16 – RESPONSIBILITY OF A LICENSED PRODUCER PRIOR TO HARVEST OF HEMP PLOTS | 26 |
| A. Sampling Prior to Harvest of Hemp Plots..... | 26 |
| SECTION 17 –PROCEDURES FOR SAMPLING | 26 |
| A. Purpose..... | 26 |
| B. Scope..... | 27 |
| C. Summary of Practice..... | 27 |
| D. Equipment and Supplies | 27 |
| E. Sampling Guidelines..... | 28 |
| SECTION 18 – PROCEDURES FOR TESTING | 32 |
| A. Purpose..... | 32 |
| B. General Sampling and Testing Procedures | 33 |
| C. Testing Methods..... | 34 |
| D. Test Results Exceeding 0.3% THC..... | 35 |
| E. Retest Procedures | 35 |
| F. Information Sharing with USDA..... | 36 |

| | |
|---|----|
| SECTION 19 – PROCEDURES FOR DISPOSAL/DESTRUCTION OF NON-COMPLAINT CANNABIS PLANTS..... | 36 |
| A. Non-Compliant Plant Destruction..... | 36 |
| SECTION 20 – OTHER REQUIRED REPORTS FOR PRODUCERS | 36 |
| A. Other Required Reports | 36 |
| B. Test Results Report..... | 37 |
| C. Failure to Submit Reports | 37 |
| SECTION 21 – TRANSPORTATION REQUIREMENTS..... | 37 |
| SECTION 22 – RESTRICTIONS ON SALE OR TRANSFER..... | 38 |
| A. Restrictions on Sale or Transfer..... | 38 |
| SECTION 23 – OTHER PROHIBITED ACTIVITIES..... | 38 |
| A. Other Prohibited Activities. | 38 |
| SECTION 24 – IMMEDIATE LICENSE SUSPENSION..... | 38 |
| A. Immediate License Suspension..... | 39 |
| SECTION 25 – NEGLIGENT VIOLATIONS; CORRECTIVE ACTION PLANS..... | 39 |
| A. Negligent Violations. Negligent Producer violations include, but are not limited to:..... | 39 |
| B. Corrective Action Plans for Negligent Violations..... | 39 |
| SECTION 26 –VIOLATIONS WITH A CULPABLE MENTAL STATE GREATER THAN NEGLIGENCE | 40 |
| A. Mandatory Reports to Tribal and Federal Law Enforcement Agencies for Violations With a Culpable Mental State Greater Than Negligence. | 40 |
| SECTION 27 - HEARINGS ON VIOLATIONS | 41 |
| A. Hearings; Consequences..... | 41 |
| SECTION 28 – COMMISSION REPORTS TO THE USDA..... | 42 |
| A. Hemp Producer Report. | 42 |
| B. Report of Occurrence of Cannabis Plants or Plant Material that do not Meet the Definition of Hemp..... | 43 |
| C. Hemp Disposal Report..... | 43 |
| D. Annual Reports | 43 |
| SECTION 29 –COMMISSION TO RETAIN INFORMATION ABOUT GROWING LOCATIONS | 43 |
| A. Commission to Retain Information About Growing Locations..... | 44 |
| SECTION 30 – REGULATIONS..... | 44 |
| A. Regulations. | 44 |
| SECTION 31– SAVINGS CLAUSE..... | 44 |

A. Savings Clause..... 44
SECTION 32 – EFFECTIVE DATE 44
A. Effective Date. 44

SECTION 1 - GENERAL PROVISIONS

A. Short Title.

This Title may be cited as the “Santee Sioux Nation Industrial Hemp Ordinance.”

B. Findings and Purpose.

The Santee Sioux Nation hereby finds and declares that:

- 1) The United States recognizes Indian tribes as having sovereignty over their members and territories.
- 2) The Santee Sioux Nation (the “Tribe”) is a federally recognized Indian Tribe organized pursuant to Section XVI of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified at 25 U.S.C. §§ 476, *et seq.*, as amended by the Act of June 15, 1935, (49 Stat. 378); and
- 3) Article III of the Santee Sioux Nation Tribal Constitution (“Tribal Constitution”) establishes the Tribal Council as the governing body of the Tribe. Article IV of the Tribal Constitution empowers the Tribal Council to, *inter alia*, manage all economic affairs and enterprises of the Tribe; to safeguard, regulate and promote the peace, safety, morals and general welfare of the nation by regulating the conduct of trade and the use and disposition of property upon the reservation; to charter subordinate organizations for economic purposes and to regulate the activities of cooperative associations of members of the nation under ordinances adopted by the Council; To delegate to district governments, subordinate board, or nation officials or to cooperative associations which are open to all members of the nation any of the foregoing powers, reserving the right to review any actions taken by virtue of such delegated powers prior to and after such actions are taken; to govern the conduct of persons under the territorial jurisdiction of the Tribe; and to regulate commerce within the jurisdictional boundaries of the Tribe or on any after acquired lands.
- 4) In 2018, the U.S. Congress enacted certain provisions in the 2018 Farm Bill that amend the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled “Hemp Production” thereby allowing for the controlled cultivation of hemp in accordance with the Act, and a State or Tribal plan approved by the Secretary of Agriculture.
- 5) In 2018, the U.S. Congress amended Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)), to remove hemp (as defined by section 297A of the Agricultural Marketing Act of 1946) from the list of federal controlled substances.
- 6) The Santee Sioux Nation has decided to open specific lands within its jurisdiction to the Production of hemp by enacting this Title to the Santee Sioux Nation Tribal Code.

C. Control of Hemp.

- 1) This Title shall govern the cultivation, processing, and distribution of hemp within the Territory of the Tribe, will be the basis of the “Tribal Plan” described in the Farm Bill, and will provide an additional source of revenue for tribal operations to provide funding for its members and the community.
- 2) Tribal regulation of the possession, cultivation, processing and distribution of hemp within the Territory of the Tribe is necessary to protect the health, security, and general welfare of the Tribal community. In order to further these goals, the Tribe has adopted this Title, which shall be liberally construed to fulfill the purposes for which it has been adopted.
- 3) Nothing in this Title shall be deemed to be in positive conflict with the Controlled Substances Act, 21 U.S.C. section 801 *et seq.*

D. Sovereign Immunity.

Nothing in this Title shall be construed to limit the jurisdiction of the Tribe, the Tribal Court or tribal law enforcement personnel and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents or authorize any form a prospective waiver of such sovereign immunity.

SECTION 2 - DEFINITIONS

A. Definitions.

- 1) “Acceptable Hemp THC Level” means when a laboratory tests a sample, it must report the 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 delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC Level for the purpose of plan compliance. This definition of “Acceptable Hemp THC Level” affects neither the statutory definition of hemp, 7 U.S.C. § 1639o (1), in the 2018 Farm 121 Bill nor the definition of “marihuana,” 21 U.S.C. § 802(16), in the federal Controlled Substances Act. (“CSA”).
- 2) “Act” means the Agricultural Marketing Act of 1946.
- 3) “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application to produce hemp under this Ordinance.

- 4) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- 5) “CBD” means cannabidiol.
- 6) “Commission” shall mean the Santee Sioux Nation Hemp Regulatory Commission, as established by this Ordinance.
- 7) “Controlled Substances Act” (“CSA”) means the Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*
- 8) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this Ordinance, a conviction is expunged when the conviction is removed from the individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this Ordinance.
- 9) “Corrective Action Plan” means a plan established pursuant to this Ordinance for a licensed hemp Producer to correct a negligent violation or non-compliance with a hemp production plan and/or 7 C.F.R. Part 990.
- 10) “Criminal History Report” means the Federal Bureau of Investigation’s Identity History Summary.
- 11) “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully, or recklessly.
- 12) “DEA” means the United States Drug Enforcement Administration
- 13) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
- 14) “Decarboxylation” means the removal or elimination of the carboxyl group from a molecule or organic compound.
- 15) “Delta-9-THC” means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For purposes of this Ordinance, delta-9 THC and THC are

interchangeable.

- 16) “Directly related to” means immediate family relations as defined in the Tribe's Constitution or any other ordinance defining nepotism.
- 17) “Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.
- 18) “Entity” means corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.
- 19) “Executive Director” shall mean the Executive Director of the Santee Sioux Nation Hemp Regulatory Commission, as established by this Ordinance.
- 20) “Farm Service Agency” or “FSA” means an agency of the United States Department of Agriculture.
- 21) “Financial interest” is a person or entity that has more than a five (5) percent interest, share or ownership in a Hemp Producer or in the revenues from the production Hemp.
- 22) “Geospatial location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.
- 23) “GPS” means Global Positioning System.
- 24) “Handle” means to harvest or store hemp or hemp plant parts prior to the delivery of such plants or plant parts for further processing. “Handle” also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- 25) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- 26) “High performance liquid chromatography” or “HPLC” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid absorbent material to separate and analyze compounds.

- 27) “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.
- 28) “Harvest Lot Identifier” means a unique identifier used by the Commission to identify the Harvest Lot.
- 29) “Hemp Crop” means one (1) or more unprocessed Hemp plants or plant parts.
- 30) “Information sharing system” means the database mandated under the Act which allows USDA to share information collected under State, tribal and USDA plans with Federal, State, Tribal and local law enforcement.
- 31) “Key participants” means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.
- 32) “Law enforcement agency” means the Santee Sioux Nation Tribal Police Department, or federal, state or local law enforcement agency having jurisdiction.
- 33) “Location” or “Land” means the particular land, building or buildings where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- 34) “Location ID” means the unique identifier established by the Applicant for each geospatial location where hemp will be grown, handled, stored, or processed, which can include a legal description, field name or building name.
- 35) “Lot” a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- 36) “Marijuana” or “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term ‘marihuana’ does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). “Marihuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

- 37) “Measurement of Uncertainty” or “MU” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- 38) “Negligence” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with this Ordinance, the Act or 7 CFR Part 990.
- 39) “Nonviable seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- 40) “Person” means an individual or business entity.
- 41) “Pesticide” means any substance or mixture of substances intended to:
- 1) Prevent, destroy, control, repel, attract, or mitigate any pest;
 - 2) Be used as a plant regulator, defoliant, or desiccant; or
 - 3) Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
- 42) “Phytocannabinoid” means cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).
- 43) “Postdecarboxylation” means, in the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THCA intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.
- 44) “ppm” means parts per million.
- 45) “Prohibited variety” means a variety or strain of cannabis excluded by this Ordinance or regulation promulgated pursuant thereto.
- 46) “Produce” means to grow hemp plants for market, or for cultivation for market, pursuant to this Ordinance.
- 47) “Producer” means a Producer as defined in 7 CFR 718.2 that is licensed or authorized to produce hemp under this Ordinance and 7 CFR Part 990, specifically, “an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled

to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A Producer includes a grower of hybrid seed.”

- 48) “Producer licensing agreement” means a document executed by an Applicant and the Commission authorizing the person to grow, handle, and store hemp at one (1) or more specified locations.
- 49) “Program” means the Tribe’s Industrial Hemp Program.
- 50) “Propagule” means a plant or plant part that can be utilized to grow a new plant.
- 51) “Registered Land Area” means a contiguous lot, parcel or tract of land registered with the Commission on which a Licensee grows or cultivates Hemp. A Registered Land Area may include land and buildings that are not used to grow or cultivate Hemp.
- 52) “Reverse Distributor” means a person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.
- 53) “Seed source” means the origin of the seed or propagules as determined by the Commission or the Executive Director.
- 54) “Signing authority” means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.
- 55) “Store” is part of the term “handle” under this Ordinance and means to deposit hemp plants or hemp plant product in a storehouse, warehouse or other identified location by a Producer for safekeeping prior to delivery to a recipient for further processing
- 56) “Territory of the Tribe” has the same meaning as “Indian Country” in 18 U.S.C. 1151.
- 57) “Tribal Council” shall mean the Tribal Council of the Santee Sioux Nation as set forth in Article III of the Tribal Constitution.
- 58) “Tribal Court” means the tribal courts of the Tribe as established pursuant to the Tribe’s Constitution and the Tribal Code.
- 59) “Tribe” means the Santee Sioux Nation, which is recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of its status as a federally recognized tribe and is recognized as possessing powers of self-government.
- 60) “Tribal Police” or “Tribal Law Enforcement” shall mean the Santee Sioux Nation Tribal Police Department.
- 61) “Variety” means a subdivision of a species that is:

- a) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
 - b) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
 - c) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.
- 62) “Variety of concern” means any variety of hemp that tests above 3,000 ppm or 0.3000 percent total THC in one (1) or more pre-harvest samples. A hemp variety designated as a “variety of concern” could be subject to restrictions and additional testing.
- 63) “Volunteer cannabis plant” means any cannabis plant that grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop and is not intentionally planted.

SECTION 3 – HEMP AUTHORIZED

A. Exemption from Prosecution for Certain Acts.

- 1) Except as otherwise provided by federal law, no person shall be subject to prosecution or civil penalty for the cultivation, production, handling, transportation or distribution of hemp in accordance with this Ordinance and federal law.

SECTION 4 - HEMP REGULATORY COMMISSION

A. Establishment; Attributes.

- 1) The Tribe hereby establishes the “Hemp Regulatory Commission” as a governmental instrumentality of the Tribe and will hereafter be referred to as “the Commission.”
- 2) The Commission is under the directive of Tribal Council, and may fulfill any, and all obligations delegated by the Tribal Council as set forth under this Ordinance.
- 3) In carrying out its purposes under this Ordinance, the Commission shall function as an arm of the Tribe.

B. Composition; Term of Office.

- 1) The Commission shall consist of five (5) persons appointed by the Tribal Council. There shall be one member of the Commission appointed from each of the Tribal Districts (Hobu Creek, Santee, Howe Creek, and Bazile Creek districts), and one member at large.

- 2) Each Commissioner shall serve for a period of three (3) years, unless such Commissioner is terminated or resigns prior to the end of his or her term.
- 3) The Commissioners must be members of the Santee Sioux Nation and reside within the boundaries of the Santee Sioux Nation.
- 4) The Commissioners may not have been convicted of a felony related to a controlled substance within the past ten (10) years.
- 5) No person with a financial interest in any Hemp Producer shall serve as a member of the Commission.
- 6) The following persons are ineligible to serve as a Commissioner: employees of any hemp Producer, hemp contractors (including any principal of a management or other contracting company), or persons directly related to or sharing a residence with any of the above.

C. Removal; Vacancies.

- 1) The Tribal Council may remove a Commissioner for the following reasons: conviction of a felony, neglect of duty, malfeasance in office, misfeasance, misconduct in office, any conduct that threatens the honesty or integrity of the position or otherwise violates the letter or intent of this Ordinance or other applicable Tribal law, or for other good cause shown. The Tribal Council's decision to remove a Commissioner shall be final and non-appealable.
- 2) Any vacancy on the Commission shall be filled by the Council at the next regularly scheduled Tribal Council meeting following the vacancy.

D. Training, Equipment; Staff.

- 1) The Commission will be provided with adequate training, equipment, staff and compensation to fully carry out the position, in the sole determination of the Tribal Council.

E. Sovereign Immunity.

- 1) The Commission shall enjoy all of the privileges and immunities of the Tribe, except as specifically limited by this Ordinance, including sovereign immunity from suit in any state, federal, or tribal court.
- 2) The Commission shall have no authority to waive the sovereign immunity of the Tribe, or any other Tribal entity.
- 3) Nothing in this Ordinance shall be deemed or construed to be a waiver of the Commission's sovereign immunity from suit.
- 4) Notwithstanding any other provision herein, as an entity of the Tribe, the Commission's immunity from suit shall at all times be deemed waived for actions against the Commission initiated by the Tribal Council.

F. Powers of the Commission.

The Commission shall have the power and responsibility to:

- 1) Enforce this Ordinance.
- 2) Approve the permitting of a Location or Land for hemp Production under this Ordinance.
- 3) Review and approve all investigative work conducted.
- 4) Review Criminal History Reports for licensees.
- 5) Make suitability determinations.
- 6) Issue Hemp Producer licenses authorized by this Ordinance, consistent with the suitability determination, and shall assign each Producer with a license or authorization identifier in a format prescribed by USDA.
- 7) Accept, review, approve, or disapprove any application for a license pursuant to this Ordinance, including licenses for producing hemp pursuant to this Ordinance.
- 8) Assess and evaluate the potential environmental impact of a Producer's proposed operations, as may be necessary.
- 9) Conduct annual inspections of, at a minimum, a random sample of hemp Producers to verify that hemp is not produced in violation of this Ordinance and federal law. The sampling procedures shall conform to Section 17 of this Ordinance.
- 10) Impose any fees necessary to the regulation of the production of hemp grown, and collect any fees imposed by this Ordinance.
- 11) Inspect, examine and monitor all hemp production operations, and have immediate access to review, inspect, examine, photocopy and audit all hemp-related records of any Hemp Producer.
- 12) Conduct or arrange for Criminal History Reports on Applicants for licenses authorized by this ordinance, Key Participants, or persons with a financial interest in any Producer and determine their eligibility to be licensed pursuant to this Ordinance and federal law.
- 13) Investigate any suspicion of wrongdoing associated with any Hemp activities and report any potential criminal violations to Tribal Law Enforcement.
- 14) Ensure compliance with all Tribal and Federal laws, rules and regulations regarding Hemp.

- 15) Adopt regulations to implement the provisions of this Ordinance, including for the assessment and collection of civil fines against any person(s) in violation of this Ordinance with a culpable mental state greater than negligence.
- 16) Issue citations for violations of this Ordinance, or any other Tribal or Federal hemp regulations.
- 17) Adopt a schedule of fines and/or forfeitures, consistent with this Ordinance.

G. Executive Director; Qualifications; Powers.

- 1) The Commission shall appoint an Executive Director of the Commission to carry out the day-to-day operations of the Commission, the powers and duties of the Executive Director as set forth in this Ordinance, and such other duties and powers that the Commission delegates to the Executive Director in writing.
- 2) The Executive Director shall be at least 21 years of age.
- 3) The Executive Director may not have been convicted of a felony relating to a controlled substance within the past ten (10) years.
- 4) No person with a financial interest in any Hemp Producer shall serve as Executive Director.
- 5) The following persons are ineligible to serve as Executive Director: employees of any hemp Producer, or persons directly related to or sharing a residence with any Hemp Producer.

H. Powers and Duties of the Executive Director.

The Executive Director:

- 1) Shall regularly report to the Commission on the hemp activities conducted on the Reservation or under the jurisdiction of the Tribe pursuant to this Ordinance.
- 2) Shall monitor the production, distribution and destruction of hemp grown within the boundaries of the Tribe.
- 3) Shall inspect and examine all premises located within the boundaries of the Tribe on which the production, cultivation, processing, and distribution of hemp grown, where necessary.
- 4) Shall identify and contract with a DEA registered laboratory to perform THC testing services.
- 5) Keep accurate records of all applications for licensure, grants or denials of licenses, receipts of fees, distribution of fees and revenues to the Tribe, and other matters within the responsibility of the Executive Director. Such records shall be retained for a minimum of three (3) years.

- 6) Establish and carry out a practice to maintain relevant information regarding land on which hemp is produced on the Reservation, including contact information for all hemp Producers, a legal description and geospatial location of the land on which hemp is produced, the status and number of all Hemp Producers' licenses or authorizations, for a period of not less than 3 years.
- 7) May demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of hemp production conducted within the Territory of the Tribe and any other matters necessary to carry out the duties of the Executive Director under this Ordinance;
- 8) Exercise all powers and responsibilities of the Executive Director set forth in this Ordinance and as directed by the Commission.

I. Compensation of the Executive Director.

- 1) The compensation of the Executive Director shall be established by the Tribal Council.

J. Quarterly Reports.

The Executive Director shall provide a quarterly report to the Tribal council summarizing the Executive Director's and the Commission's official actions, activities, investigative reports, and reports received from any licensed Producer to keep Tribal Council fully informed as to the status of the Executive Director's and the Commission's activities.

K. Review of Decisions.

- 1) A person aggrieved by a decision of the Commission to deny, suspend, or revoke any license authorized by this Ordinance and may seek the Tribal Council's review of such decision by filing a written petition for review with the Tribal Council within thirty (30) calendar days of service of the written notice of decision. If a petition for reconsideration is not filed within such time, the Commission's decision shall be final.
- 2) Following review and consideration of the petition for review, the Tribal Council may overturn the decision of the Commission, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Tribe and its Tribal members, or the Tribal Council may affirm the decision of the Commission. The decision of the Tribal Council shall be final and not subject to judicial review.

SECTION 5 – LICENSING APPLICATION

A. Producer License Application.

- 1) Any person who wishes to Produce Hemp at any location within the Territory of the Tribe shall submit to the Commission or the Executive Director a completed License Application.

- 1) A person who does not hold a license from the Commission shall not Produce Hemp at any location within the Territory of the Tribe.
- 2) The Application shall include the following at a minimum:
 - a) Full name, residential address, telephone number, and email address, if an email address is available, of the Applicant.
 - b) If the Applicant represents a business entity:
 - i) The full name of the business;
 - ii) The principal business location address;
 - iii) The full name of the person who will have signing authority on behalf of the entity, and the title, phone number, and email address if an email address is available, of the person;
 - iv) The full names, addresses, phone numbers and email addresses (if available) of all owners, operators, landlords, tenants, or sharecroppers, who share in the risk of producing a hemp crop and who are entitled to share in the hemp crop available for marketing from the hemp growing operation, or who would have shared had the crop been produced;
 - v) The full names, addresses, telephone numbers and email addresses of all Key Participants of the business entity; and
 - vi) The EIN of the business entity.
 - c) Documentation showing either a valid tenancy, ownership or other legal interest in the proposed property.
 - d) Street address, location ID, legal description and Geospatial location for each field, greenhouse, building, or site where hemp will be produced.
 - e) Information regarding any other hemp growing or processing facility that is licensed in any other jurisdiction.
 - f) A current Criminal History Report for the Applicant/Producer, and for Applicants that are entities, all Key Participants, dated within 60 days prior to the application submission date. A license application will not be considered complete without all required Criminal History Reports.
- 3) A business plan and operations plan shall be included with the application that includes at a minimum the following:

- a) The proposed acreage or greenhouse or indoor square footage to be planted;
 - b) A list of pesticides, and other chemicals proposed for use, if any;
 - c) A statement of previous farming experience; and
 - d) Planned source of seeds or propagules, including the strain or variety of seed.
- 4) Any License Application that is missing required information shall be subject to denial.
 - 5) The Commission shall notify Applicants by letter or email whether the application has been denied or approved.
 - 6) Producers and the Commission shall retain all information required by this Section 5(A) for at least three (3) calendar years.

B. Criminal History Reports.

- 1) Each Applicant/Producer, and if the Applicant is an entity, persons with a financial interest in the applicant, and all Key Participants of the Applicant/Producer shall submit Criminal History Reports with the application.
- 2) The Criminal History Report shall consist of a current Federal Bureau of Investigation Identity History Summary.
- 3) The Criminal History Report shall be dated within 60 days of the submission of the application material.
- 4) The criminal background check report must indicate that, within ten (10) years from the date when the background check was issued, the applicant shall not have a felony conviction related to a controlled substance under state, tribal, or federal law.

C. Hemp Producers; Operating Fee.

- 1) The Tribal Council shall determine the appropriate number of hemp Producers.
- 2) A person who wishes to Produce Hemp shall be required to meet all applicable licensing requirements under this Ordinance.
- 3) The Tribal Council may establish license application fees for any Hemp Producer authorized by this Ordinance.
- 4) Every Hemp Producer shall pay quarterly to the Tribe an operating fee equal a percentage of its total income from all sources derived from or attributable to the production of Hemp for the quarter. The Tribal Council shall set the operating fee percentage pursuant to Tribal Council Resolution, and may adjust the operating fee percentage from time to time in its sole

discretion. For purposes of this section, “total income from all sources derived from or attributable to the production of Hemp” means gross income minus the cost of production.

- 5) The operating fee assessed under this section shall be due and payable on the fifteenth day following the close of the fiscal quarter and shall be subject to interest and applicable penalties. A penalty of 20% percent of the amount of any underpayment shall be added to the fee. For purposes of this section, the underpayment amount shall be equal to the difference between the total amount of the operating fee imposed by this section less the amount paid.
- 6) All operating fees shall be remitted to the Tribal Treasurer, which shall keep accurate records of all such receipts, and shall be subject to distribution by the Tribal Council in accordance with its usual appropriation procedures for governmental and social services.
- 7) The Tribal Council may exempt any tribally-owned Hemp Producer from Application fees or operating fees.

SECTION 6 - LOCATION OR LAND PERMIT

A. Location or Land Permit Requirements.

- 1) A licensed Producer shall not plant or grow any cannabis that is not Hemp.
- 2) A licensed Producer shall not plant or grow hemp on any site not listed in the licensing agreement or Registered Land Area.
- 3) A licensed Producer shall not grow hemp in or adjacent to any structure that is used for residential purposes.
- 4) A licensed Producer shall not handle or store leaf or floral material from hemp in or adjacent to any structure that is used for residential purposes.
- 5) Hemp shall be physically segregated from other crops.
- 6) A licensed Producer shall not plant hemp plants in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the Commission.
- 7) A licensed Producer shall not grow hemp in any outdoor field or site that is located within 1,000 feet of a school or a public recreational area.
- 8) An Applicant or licensed Producer shall not include any property on his or her application or Site Modification Request, to grow or cultivate hemp that is not owned or completely controlled by the Applicant or licensed Producer.
- 9) A licensed Producer shall not produce hemp on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied

Santee Sioux Nation Industrial Hemp Ordinance

Amended February 5, 2020

a license.

SECTION 7 - PRODUCER LICENSING AGREEMENTS

A. Producer Licensing Agreement Contents.

Any Producer Licensing Agreement shall contain the following:

- 1) An Applicant shall not be licensed until the Applicant is approved and the Applicant and the Commission have executed a Producer licensing agreement.
- 2) The agreement shall have a consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by the Commission, representatives of the Commission and law enforcement agencies, with or without cause, with or without advance notice.
- 3) The Applicant consents to forfeiture and destruction, consistent with the CSA and DEA regulations, without compensation, of:
 - a) Material that exceeds the Acceptable Hemp THC Level;
 - b) Plants located in an area that is not licensed by the Commission; and
 - c) Plants not accounted for in required reporting to the Commission.
- 4) The Applicant agrees to apply for registration of all growing, processing, handling, and storage locations, including a legal description of the location, Geospatial location, and receive approval for those locations prior to having hemp on those premises.
- 5) The Applicant acknowledges that licensed Producers shall submit a Site Modification Request Form, and obtain prior written approval from a representative of the Commission before implementing any change to the licensed sites stated in the Producer licensing agreement.
- 6) Acknowledgement by the Applicant that hemp shall not be produced in any location other than the location listed in the Producer licensing agreement.
- 7) Agreement by the Applicant not to interplant hemp with any other crop without express written permission from the Commission.
- 8) Acknowledgement by the Applicant that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with regulations or the agreement.
- 9) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed Producer.

- 10) Agreement that any time hemp is in transit, a copy of the Producer licensing agreement and Harvest Lot Identifier, and a copy of THC test results for the Lot, shall be available for inspection upon the request of a representative of the Commission or a law enforcement agency.
- 11) Agreement that, upon request from a representative of the Commission or a law enforcement agency, a licensed Producer shall immediately produce a copy of his or her Producer licensing agreement for inspection.
- 12) Agreement to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the Commission or the USDA to on or before the deadlines established in this Ordinance.
- 13) Agreement to scout and monitor unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the Commission.
- 14) Agreement not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the program for one (1) or both of the following reasons:
 - a) Failure to obtain an acceptable Criminal History Report; or
 - b) Failure to comply with an order from a representative of the Commission or the Tribal Council.
- 15) Agreement that land used for the production of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the program for one (1) or both of the following reasons:
 - a) Failure to obtain an acceptable criminal background check or Criminal History Report; or
 - b) Failure to comply with an order from a representative of the Commission.
- 16) Agreement to notify the Commission of any interaction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence.
- 17) Agreement to notify the Commission of any theft of cannabis materials, whether growing or not.
- 18) Failure to agree or comply with terms and conditions established in the Producer licensing and/or processor agreement shall constitute grounds for appropriate Commission or Tribal Council action, up to and including revocation of the Producer license.
- 19) A person who has been expelled from the program shall not be eligible to reapply to the

program for a period of five (5) years from the date of expulsion.

- 20) Failure to agree and sign the Producer licensing agreement shall terminate conditional approval and a licensing agreement shall not be executed.

SECTION 8 - SITE MODIFICATIONS

A. Site Modifications.

- 1) A licensed Producer who elects produce hemp in a new location other than the sites specified by the legal description and Geospatial location in the Producer licensing agreement shall submit a Site Modification Request Form, and obtain written approval from a representative of the Commission, prior to planting Hemp at the proposed location.
- 2) Any request for a new Hemp production location shall comply with all applicable land use restrictions.
- 3) The Commission may charge a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be planted.

SECTION 9 – SEED ACQUISITION WITHIN THE UNITED STATES

A. Seed Acquisition Within the United States.

- 1) A person shall not acquire seeds or propagules from a source within the United States without first:
 - a) Submitting a complete Domestic Seed/Propagule Request form, and
 - b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the Commission.
- 2) The Commission shall not approve a Domestic Seed/Propagule Request unless the licensed Producer affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person.
- 3) A person submitting a Domestic Request form shall submit to the Commission documentation showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC content of not more than 3,000 ppm on a dry weight basis from an independent third-party laboratory.
- 4) A person submitting a Domestic Seed/Propagule Request form shall submit to the Commission documentation verifying the seed or propagule source as a current legal hemp operation in the jurisdiction of origin.

- 5) A person acquiring seeds or propagules shall arrange for the seeds or propagules to arrive at the Commission for inventory and distribution.
- 6) Upon request from a representative of the Commission, a licensed Producer shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the Commission's facility.

SECTION 10 – SEED ACQUISITION FROM A SOURCE OUTSIDE OF THE UNITED STATES

A. Seed Acquisition from a Source Outside of the United States.

- 1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the Commission:
 - a) A person shall not acquire seeds from a source outside the United States unless the Commission first obtains a Permit to Import from the DEA, if required.
- 2) A person shall not acquire propagules other than seeds from outside the United States.
- 3) All licensed Producers intending to plant the requested seed shall be listed on the request form.
- 4) The Commission shall not approve an International Seed Request form unless the licensed Producer affirms in writing that the licensed Producer's planned activities shall not infringe on the intellectual property rights of any person.
- 5) A person submitting an International Seed Request form shall submit to the Commission documentation showing that mature plants grown from that seed variety have a floral material delta-9-THC content of not more than 3,000 ppm on a dry weight basis.
- 6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the Commission's facility, for inventory and distribution.
- 7) Upon request from a representative of the Commission, a licensed Producer shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the Commission's facility.

SECTION 11 – SEEDS OF WILD, LANDRACE, OR UNKNOWN ORIGIN

A. Seeds of Wild, Landrace, or Unknown Origin.

- 1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the Commission.

- 2) The Commission shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the Commission first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the Commission or its designee.
- 3) Any licensed Producer or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the Commission shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

SECTION 12 – PRODUCER PLANTING REPORTS FOR OUTDOOR PLANTINGS

A. Planting Reports for Outdoor Plantings.

- 1) A licensed Producer or Producer shall submit to the Commission a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location.
- 2) Each Field Planting Report shall identify the:
 - a) Correct variety name as designated upon approval of the acquisition request or as approved by the Commission;
 - b) Field location ID as listed in the Producer licensing agreement; and
 - c) Primary intended use of the harvest for each planting (e.g., fiber, seed, CBD extraction).
- 3) A licensed Producer who does not plant hemp in an approved outdoor site listed in the Producer license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall not be planted at that site.

SECTION 13 – PRODUCER PLANTING REPORTS FOR INDOOR PLANTINGS

A. Planting Reports for Indoor Plantings.

- 1) A licensed Producer shall submit to the Commission a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.
- 2) Each Greenhouse/Indoor Planting Report shall identify the:
 - a) Correct hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the Commission;

- b) Greenhouse or indoor growing location ID as listed in the Producer licensing agreement;
and
 - c) Primary intended use for the harvest of each planting (e.g., fiber, seed CBD extraction).
- 3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed Producer with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the Commission, such Reports shall be due no later than March 31, June 30, September 30, and December 31.

SECTION 14 – PESTICIDE USE

A. Pesticide Use.

- 1) A licensed Producer who uses a pesticide on hemp shall be certified to apply pesticides by the Commission regulations.
- 2) A licensed Producer who is certified to apply pesticides by the Commission shall not use or be eligible to use pesticides to hemp in violation of the product label.
- 3) A licensed Producer shall not use any pesticide in violation of the product label.
- 4) A licensed Producer who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.
- 5) The Commission may perform pesticide testing on a random basis or if representatives of the Commission have reason to believe that a pesticide may have been applied to hemp in violation of the product label.
- 6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

SECTION 15 – SITE ACCESS FOR REPRESENTATIVES OF THE COMMISSION AND LAW ENFORCEMENT AGENCIES

A. Site Access for Representatives of the Commission and Law Enforcement Agencies.

- 1) The Commission shall provide information about approved hemp production locations to the Tribal Police, USDA, DEA, and other federal or tribal law enforcement agencies whose representatives request registered site information, including legal description and Geospatial location.

- 2) Licensed Producers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the Producer licensing agreement.
- 3) A licensed Producer, shall permit a representative of the Commission or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the Producer licensing agreement with or without cause and with or without advanced notice. The producer or an authorized representative has to be present.

SECTION 16 – RESPONSIBILITY OF A LICENSED PRODUCER PRIOR TO HARVEST OF HEMP PLOTS

A. Sampling Prior to Harvest of Hemp Plots.

- 1) Within 15 days prior to the anticipated harvest of cannabis plants, a producer shall have an approved Federal, State, local law enforcement agency or other USDA designated person collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing.
- 2) The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a Representative sample is collected that represents a homogeneous composition of the lot.
- 3) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.
- 4) Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.
- 5) A producer shall not harvest the cannabis crop prior to samples being taken, and shall harvest the crop not more than fifteen (15) days following the date of sample collection.

SECTION 17 –PROCEDURES FOR SAMPLING

A. Purpose

Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana.

- 1) The measurements are intended to be representative of the THC content in a “lot” of hemp crop acreage as identified by the Producer.
- 2) Hemp Producers may not harvest hemp prior to the hemp being sampled and tested for THC concentration.

B. Scope

- 1) Samples collected under this procedure are acceptable for submission to a qualified, DEA-registered laboratory for determination of THC in hemp.
- 2) Since the THC content of hemp generally peaks as the plant ripens, the timing of when sampling occurs is important to accurately measure THC concentration and monitor compliance with the USDA hemp production program.
- 3) Samples must be collected by a USDA approved sampling agent, or a Federal, State or Tribal law enforcement agent authorized by USDA to collect samples. It is the responsibility of the licensed Producer to pay any fees associated with sampling.

C. Summary of Practice

- 1) This practice provides procedures for entering a growing area and collecting the minimum number of plant specimens necessary to represent a homogeneous composition of the “lot” that is to be sampled. An authorized representative enters a growing area, strategically examines the growing area, establishes an approach for navigating the growing area, and collects individual specimens of plants in order to obtain a representative sample of hemp in the designated lot.
- 2) Cuttings from each “lot” of hemp crop acreage, as identified by the Producer, and submitted to and uniquely identified by the Farm Service Agency per the requirements of the USDA hemp production program, shall be organized as composite samples. For the purposes of these procedures, a “lot” is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, “lot” refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time. “Lot” is to be defined by the Producer in terms of farm location, field acreage, and to be reported as such to the FSA.

D. Equipment and Supplies

- 1) Garden pruners/shears (Cleaned prior to and following each composite sample. Some examples of appropriate cleaning agents and supplies to use on garden pruners/shears are bleach, rubbing alcohol, steel wool, and/or sandpaper.)
- 2) Sample bags, paper.
 - a) The size of the bags will depend upon the number of clippings collected per lot.
 - b) The bags should be made from material known to be free from THC.
- 3) Security tape
- 4) Permanent markers

- 5) Sample collection forms
- 6) GPS Unit
- 7) Disposable gloves – Nitrile

E. Sampling Guidelines

- 1) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.
- 2) Surveillance of the growing area.
 - a) The inspector shall verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.
 - b) The inspector shall estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the flowering material, meaning inflorescences (flowers/buds).
 - c) The inspector shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.
- 3) Time of Sampling:
 - a) Within 15 days prior to the anticipated harvest of cannabis plants, an approved Federal or Tribal law enforcement agency or other Tribal designated person shall collect representative samples from such cannabis plants for THC concentration level testing.
- 4) Field Sampling:
 - a) For purposes of determining the number of individual plants to select for sampling, the size of the growing area shall be considered. For sampling purposes, samples from separate “lots” must be kept separate and not be commingled.
 - b) 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.
 - c) For growing areas 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 Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.
 - i) 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.
 - ii) The initial number of primary plants is estimated using

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

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 THC content greater than the Acceptable Hemp THC Level. The values for i are based on past experience in the same or similar growing areas.

- iii) 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.

- iv) Example 1 : The initial primary plant sample size is 299 with a confidence level of 95% to detect hemp plants having THC content greater than the Acceptable Hemp THC Level and a proportion of hemp plants having THC content of greater than the Acceptable Hemp THC Level equal to 0.01 is considered appropriate. The adjusted primary plant sample sizes for fields from 11 to 173 acres in size are shown in the following table:

| Number of acres | Sample Size "n" |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 11 | 11 | 40 | 36 | 75-76 | 61 | 119-120 | 86 |
| 12 | 12 | 41-42 | 37 | 77 | 62 | 121-122 | 87 |
| 13 | 13 | 43 | 38 | 78-79 | 63 | 123-124 | 88 |
| 14 | 14 | 44 | 39 | 80-81 | 64 | 125-126 | 89 |
| 15 | 15 | 45-46 | 40 | 82 | 65 | 127-128 | 90 |
| 16 | 16 | 47 | 41 | 83-84 | 66 | 129-130 | 91 |
| 17 | 17 | 48 | 42 | 85-86 | 67 | 131-132 | 92 |
| 18-19 | 18 | 49-50 | 43 | 87 | 68 | 133-134 | 93 |
| 20 | 19 | 51 | 44 | 88-89 | 69 | 135-136 | 94 |
| 21 | 20 | 52 | 45 | 90-91 | 70 | 137-138 | 95 |
| 22 | 21 | 53-54 | 46 | 92 | 71 | 139-140 | 96 |
| 23 | 22 | 55 | 47 | 93-94 | 72 | 141-143 | 97 |
| 24 | 23 | 56 | 48 | 95-96 | 73 | 144-145 | 98 |
| 25-26 | 24 | 57-58 | 49 | 97-98 | 74 | 146-147 | 99 |
| 27 | 25 | 59 | 50 | 99 | 75 | 148-149 | 100 |
| 28 | 26 | 60-61 | 51 | 100-101 | 76 | 150-152 | 101 |
| 29 | 27 | 62 | 52 | 102-103 | 77 | 153-154 | 102 |
| 30 | 28 | 63-64 | 53 | 104-105 | 78 | 155-156 | 103 |
| 31-32 | 29 | 65 | 54 | 106-107 | 79 | 157-157 | 104 |
| 33 | 30 | 66-67 | 55 | 108 | 80 | 159-161 | 105 |
| 34 | 31 | 68 | 56 | 109-110 | 81 | 162-163 | 106 |
| 35 | 32 | 69-70 | 57 | 111-112 | 82 | 164-166 | 107 |
| 36 | 33 | 71 | 58 | 113-114 | 83 | 167-168 | 108 |
| 37-38 | 34 | 72-73 | 59 | 115-116 | 84 | 169-170 | 109 |
| 39 | 35 | 74 | 60 | 117-118 | 85 | 171-173 | 110 |

- v) Example 2: The adjusted primary plant sample sizes for fields from less than 1 to 10 acres in size are shown in the following table:

| Number of Acres "N" | Sample Size "n" |
|---------------------|-----------------|
| Less than 1 | 1 |
| 1 | 1 |
| 2 | 2 |
| 3 | 3 |
| 4 | 4 |
| 5 | 5 |
| 6 | 6 |
| 7 | 7 |
| 8 | 8 |
| 9 | 9 |
| 10 | 10 |

5) Collecting Samples from each lot:

- a) Sampling agents shall always walk at right angles to the rows of plants, beginning at one point of the lot and walking towards another point on the opposite side of the lot.
- b) While walking through the growing area, the inspector 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.
- c) The cut shall be made just underneath a flowering material, meaning inflorescence (the flower or bud of a plant), located at the top one-third (1/3) of the plant. (See figure below.) The sample size must be of adequate volume to accommodate laboratory tests.



- d) 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.
- e) Seal each bag and record the sample number.

6. Sample identification:

- a) The inspector shall seal each bag and record the sample identification number. The sample shall also be identified with the following information:
 - i) The sample ID shall include:
 - a. Sampling agent contact information;
 - b. name and contact information of the Producer;
 - c. Producer hemp license or authorization number;
 - d. date of sample;
 - e. “lot” ID as provided by the USDA Farm Service Agency; and
 - f. any other information that may be required by the Commission, Law Enforcement Authorities, mail delivery services, customers or groups of customers.

SECTION 18 – PROCEDURES FOR TESTING

A. Purpose

- 1) Standard testing procedures are specified for samples taken in accordance with the Sampling Procedures for the USDA Hemp Program to measure the delta-9 tetrahydrocannabinol (THC) concentration levels of those samples on a dry weight basis. Hemp testing laboratories are not required to be ISO accredited, although the Commission strongly encourages adherence to the ISO 17025 standard.
- 2) The results are intended to measure the THC content of composite hemp samples collected from a designated “lot” of hemp crop acreage designated by a hemp Producer and as reported to the USDA Farm Service Agency as required under the USDA hemp production program. The purpose of the measurements are to determine whether the THC concentration of the tested material is within the Acceptable Hemp THC Level.
- 3) As required under USDA hemp production program regulation, laboratories conducting testing of hemp must conduct analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol THC and shall meet the following standards:
 - a) Laboratory quality assurance must ensure the validity and reliability of test results;
 - b) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can

successfully perform the testing;

- c) The demonstration of testing validity must ensure consistent, accurate analytical performance; and
 - d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Section.
 - e) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting these requirements include, but are not limited to, gas chromatography and high-performance liquid chromatography.
 - f) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
 - g) Any sample test result showing with at least 95% confidence that the THC content of the sample is higher than the Acceptable Hemp THC Level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Section.
- 4) Laboratories approved for THC testing must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13.
 - 5) Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may *not* be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with Section 19, “Procedures for Disposal/Destruction of Non-compliant cannabis plants.”

B. General Sampling and Testing Procedures

- 1) Laboratory receives sample.
- 2) Dry sample to remove the majority of water.
- 3) Mill and “manicure” sample through a wire screen no larger than 1.5 x 1.5mm to discard mature seeds and larger twigs and stems.
- 4) Separate sample into a test and retain specimens.
 - a) Test specimen: go to step 5
 - b) Retain specimen: package and store until needed. When needed go to step 5.
- 5) Determine moisture content or dry to a consistent weight (meeting criteria).
- 6) Perform chemical analysis.

- 7) Calculate total THC on a dry weight basis. Test results should be determined and reported on a dry weight basis.
- 8) Samples shall be received and prepared for testing in a DEA registered laboratory as follows:
 - a) Once the composite sample is received by the laboratory, the laboratory shall dry all of the leaf and flower (not obvious stem and seeds) of the composite sample until brittle in a manner that maintains the THC level of sample. Samples are to be dried to a consistent loss (typically 5- 12% moisture content) so that the test can be performed on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.
 - b) The laboratory shall mill and manicure samples through a wire screen no larger than 1.5x 1.5mm to discard mature seeds and larger twigs and stems.
 - c) The laboratory shall form sieve a "Test Specimen" and a "Retain Specimen." One sample part shall be selected for analysis and labeled "Test Specimen". The other sample part shall be marked "Retain Specimen" and shall be packaged and stored in a secured place.
 - d) The laboratory shall then determine moisture content or dry to a consistent weight.
 - e) The laboratory will then perform chemical analysis on the sample using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic *acid* (THCA) into THC.
 - f) Testing methodologies meeting these requirements include those using gas chromatography and high-pressure liquid chromatography, or other reliable method. *High-performance liquid chromatography*. High- performance liquid chromatography (HPLC) or (LC) is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, HPLC is one of the valid methods by which laboratories may test for THC concentration levels.
 - g) The laboratory will then calculate total THC on a dry weight basis.

C. Testing Methods

The total available THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis.

- 1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate Measurement of Uncertainty. The Measurement of Uncertainty shall be reported with test results. Laboratories shall meet the AOAC International

standard method performance requirements (SMPR) for selecting an appropriate method. The range of estimated uncertainty is reported as a ± value and is the same unit as the hemp THC threshold (0.3% THC), following best practices for significant figures and rounding. Measurement of uncertainty (MU) must be estimated and reported with test results.

- 2) There are resources available for defining, guiding, and calculating measurement uncertainty. They include the GUM, ISO, and Eurachem. It is necessary for the laboratory to determine the uncertainty of accuracy (u_{bias}), repeatability (u_r), and reproducibility (u_R) for each validated method. Once the expanded measurement uncertainty (U) is determined, then the confidence interval can be calculated around a designated threshold such as the hemp THC threshold (0.3% THC).
- 3) Based on the aforementioned resources, the following equation is recommended:

Equation:

$$U = k \times u_c$$

Where,

$$u_c = \sqrt{u_r^2 + u_R^2 + u_{bias}^2}$$

And:

u = standard uncertainty (standard deviation)

u_r = uncertainty due to repeatability

u_R = uncertainty due to reproducibility

u_{bias} = uncertainty due to accuracy (bias)

u_c = combined standard uncertainty

U = Expanded uncertainty = $\frac{u}{Mean} * k_{95\% \text{ confidence level}}$, $k = 2$

k = coverage factor, use 2 for a 95% confidence level

D. Test Results Exceeding 0.3% THC

Any sample test result showing with at least 95% confidence that the THC content of the sample is higher than the Acceptable Hemp THC Level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed under the Act. If the results of a test conclude that the THC levels of a sample are conclusively higher than the Acceptable Hemp THC Level, the laboratory will promptly notify the Producer, the Commission and USDA or its authorized agent.

E. Retest Procedures

Any licensed Producer may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error. If this occurs, the laboratory shall follow the same procedures as described in paragraphs (A)-(C) above that were followed to

conduct the initial test. The licensee requesting the retest of the second sample will pay the cost of the test. The retest results shall be issued to the licensee requesting the retest and a copy shall be provided to the Commission and the USDA or its agent.

F. Information Sharing with USDA

Laboratories performing THC testing for hemp produced under this program are required to share test results with the licensed Producer and the Commission. Laboratories may provide test results to the Commission and licensed Producers in whatever manner best aligns with their business practices, but the Commission and Producers must be able to produce a copy of test results. For this reason, providing test results to the Commission and Producers through a web portal or through electronic mail, so the Commission and the Producer will have ready access to print the results when needed, is preferred.

SECTION 19 – PROCEDURES FOR DISPOSAL/DESTRUCTION OF NON-COMPLIANT CANNABIS PLANTS.

A. Non-Compliant Plant Destruction.

- 1) Cannabis plants exceeding the Acceptable Hemp THC Level constitute marijuana, a schedule 1 controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 et seq., and must be disposed of in accordance with the CSA and DEA regulations.
- 2) When a hemp sample tests above the Acceptable Hemp THC Level, the material from the production area which the sample represents must be destroyed by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, Tribal, State, or local law enforcement officer or their designee.
- 3) Producers must notify the Commission and USDA of their intent to dispose of non-conforming plants and verify disposal by submitting required documentation. This can be accomplished by either providing the Commission and the USDA with a copy of the documentation of disposal provided by the reverse distributor or with the “USDA Hemp Plan Producer Disposal Form.”

SECTION 20 – OTHER REQUIRED REPORTS FOR PRODUCERS

A. Other Required Reports

- 1) All licensed Producers shall report hemp crop acreage with FSA and shall provide, at a minimum, the following information:
 - a) Street address, and to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant/Producer produces 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.

- c) License or authorization identifier.
- 2) A licensed Producer shall submit to the Commission a completed report to the Commission annually detailing the total acreage of hemp planted, harvested, and if applicable, disposed.

B. Test Results Report

Each Producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. The Test Results report shall contain the information described in this paragraph (2) for each sample tested:

- a) Producer’s license or authorization identifier.
- b) Name of Producer.
- c) Business address of Producer.
- d) Lot identification number for the sample.
- e) Name and DEA registration number of laboratory.
- f) Date of test and report.
- g) Identification of a retest.
- h) Test result.

C. Failure to Submit Reports

A licensed Producer’s failure to submit an accurate and complete report that is required by the Commission or the USDA before the deadline established by the Commission or the USDA shall constitute grounds for the Commission to terminate the Producer licensing agreement and deny future applications for licensure.

SECTION 21 – TRANSPORTATION REQUIREMENTS

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

- 1) a copy of the Producer license that corresponds to the Location or Registered Land Area from which the Hemp originated;
- 2) a copy of the pre-harvest test results that correspond to the to the Harvest Lot in transit as identified by the Harvest Lot Identifier that accompanies the Hemp.
- 3) a copy of the transport manifest that includes all information required to be documented by the Commission or the Tribe.

- 4) any other documentation that may be required by the Tribe, the Commission, or the USDA.

SECTION 22 – RESTRICTIONS ON SALE OR TRANSFER

A. Restrictions on Sale or Transfer.

- 1) A licensed Producer shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person without prior approval by the Commission.
- 2) The Commission shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of the Acceptable Hemp TCH Level), and other marketable hemp products to members of the general public, if the marketable hemp product's delta-9-THC level does not exceed the Acceptable Hemp THC Level.
- 3) A licensed Producer selling or transferring, or permitting the sale or transfer, of hemp, shall retain testing data or results for at least three (3) calendar years demonstrating that the delta-9-THC level is not more than the Acceptable Hemp THC Level.
- 4) Licensees shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

SECTION 23 – OTHER PROHIBITED ACTIVITIES

A. Other Prohibited Activities.

- 1) A licensed Producer shall not plant or grow hemp on any site not listed in the Producer licensing agreement.
- 2) A licensed Producer shall not allow unsupervised public access to hemp Lots, including activities such as a hemp maze.
- 3) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the Commission as a prohibited variety.
- 4) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of the Acceptable Hemp THC Level.

SECTION 24 – IMMEDIATE LICENSE SUSPENSION

A. Immediate License Suspension.

- 1) The Commission shall immediately suspend a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony related to a controlled substance.
- 2) The Commission shall immediately suspend a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having made any false statement to the Commission or its representative or failed to comply with any instruction or order from the Commission, a representative of the Commission, or any tribal or federal law enforcement officer.

SECTION 25 – NEGLIGENT VIOLATIONS; CORRECTIVE ACTION PLANS

A. Negligent Violations. Negligent Producer violations include, but are not limited to:

- 1) Failure to provide a legal description of land on which the Producer produces hemp;
- 2) Failure to obtain a license or other required authorization from the Commission;
- 3) Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the Acceptable Hemp THC Level. Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a delta-9 tetrahydrocannabinol concentration/Acceptable Hemp THC Level of more than 0.5 percent on a dry weight basis.
- 4) Any other violation of this Ordinance, except for violations committed with a culpable mental state greater than negligence.

B. Corrective Action Plans for Negligent Violations.

- 1) A person who is found by the Commission to have negligently violated this Ordinance, or any statute or administrative regulation governing that person's participation in the hemp program shall be subject to a corrective action plan.
- 2) Corrective action plans issued by the Commission shall include, at a minimum, the following information:
 - a) A reasonable date by which the person shall correct his or her violation; and
 - b) A requirement for periodic reports from the person to the Commission about the person's compliance with the corrective action plan, statutes, and administrative regulations for a period of at least two (2) calendar years from the date of the negligent violation.
- 3) A hemp Producer that negligently violates this Ordinance or any tribal law or regulation regulating hemp, shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal or local government.

- 4) A hemp Producer that negligently violates this Ordinance or any tribal law or regulation regulating hemp three 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.
- 5) The Commission shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

SECTION 26 –VIOLATIONS WITH A CULPABLE MENTAL STATE GREATER THAN NEGLIGENCE

A. Mandatory Reports to Tribal and Federal Law Enforcement Agencies for Violations With a Culpable Mental State Greater Than Negligence.

- 1) A person who is found by the Commission to have violated this Ordinance, federal law, or any tribal administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be barred from participating in the Tribe's Hemp Program for a minimum of five (5) years, and be subject to the requirements set forth in this section.
- 2) The Commission shall *immediately* report a person who is found to have violated this Ordinance or any administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:
 - a) The Attorney General of the United States; and
 - b) The Chief of the Santee Sioux Nation Tribal Police Department.
- 3) **Felonies.** Any person convicted of a felony relating to a controlled substance under State, Tribal or Federal law within 10 years shall be ineligible to participate in the Tribe's Hemp Program.
 - a) An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 whose conviction also occurred before that date.
 - b) Any producer 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 October 31, 2019 shall be exempt from paragraph (3) of this Section.
 - c) For Producers that are entities, all Key Participants and persons with an ownership interest in the entity shall be considered to be participating in the plan and subject to the felony restriction for purposes of paragraph (3) of this Section.

- d) Any person who materially falsifies any information contained in a Producer application to participate in the Santee Sioux Nation's Hemp Program shall be ineligible to participate in the Santee Sioux Nation Hemp Program.
- 4) **Civil Penalties.** If the Commission receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Ordinance or the Tribe's hemp Regulations, or the licensing agreement, with a culpable mental state greater than negligence, then the Commission shall be bar that person from participating in the Tribe's Hemp Program for a minimum of five (5) years, and may further assess a monetary civil penalty not to exceed \$2,500 per violation.

SECTION 27 - HEARINGS ON VIOLATIONS

A. Hearings; Consequences.

- 1) Upon receiving information that a Producer has violated this Ordinance, any federal law, or any tribal administrative regulation governing that person's participation in the hemp program, the Commission shall provide reasonable notice to the Producer of the date when a hearing will occur to determine if a violation has occurred.
- 2) Hearings shall be open to the tribal membership.
- 3) The Producer shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments that a violation has not occurred.
- 4) A representative of the Commission shall be allowed an opportunity to present information and arguments regarding the alleged violation.
- 5) The Producer shall allowed an opportunity to present information and arguments.
- 6) If the Commission finds that it is more likely than not that a Producer negligently violated this Ordinance, any federal law, or any tribal administrative regulation governing that person's participation in the hemp program, the provisions of Section 25 of this Ordinance shall apply.
- 7) If the Commission determines that it is more likely than not that a Producer violated this Ordinance, federal law, or any tribal administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence, then Section 26 of this Ordinance shall apply, and the person shall be barred from participation in the Tribe's Hemp Program in any capacity for a minimum period of five (5) years.
- 8) If the Commission determines that no violation has occurred, the proceedings shall be dismissed.

- 9) Decisions of the Commission pursuant to this Section are subject to review by the Tribal Council pursuant to Section 4(K) of this Ordinance.

SECTION 28 – COMMISSION REPORTS TO THE USDA

A. Hemp Producer Report.

The Commission shall collect, maintain and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under this Ordinance as set forth in this Section, and 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 Ordinance. 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 be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the information described in this Section.

1) Producer Information.

- a) For each new Producer who is an individual and is licensed or authorized under this Ordinance, the report shall include full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available).
- b) For each new Producer that is an entity and is licensed or authorized under this Ordinance, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.
- c) For each Producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.

2) Location Information.

- a) A legal description of the land on which the producer will produce hemp in the Territory of the Tribe including its geospatial location.
- 3) The status and number of each Producer's license or authorization.
 - 4) The period covered by the report.
 - 5) The information set forth in Section 20(A)(2) of this Ordinance.
 - 6) Indication that there were no changes during the current reporting cycle, if applicable.

B. Report of Occurrence of Cannabis Plants or Plant Material that do not Meet the Definition of Hemp.

The Commission shall promptly notify the Administrator by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

C. Hemp Disposal Report

If a Producer has produced cannabis exceeding the Acceptable Hemp THC Level, the cannabis must be disposed of in accordance with the Controlled Substances Act and DEA regulations. The Commission shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials. This report would include information regarding name and contact information for each Producer subject to a disposal during the reporting period, and date disposal was completed. If the first of the month fall on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information described in this paragraph (7).

- a) Name and address of the Producer.
- b) Producer license or authorization identifier.
- c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.
- d) Information on the agent handling the disposal.
- e) Disposal completion date.
- f) Total acreage.

D. Annual Reports

The Commission shall submit an annual report to USDA. The Report form shall be submitted by December 15 of each year and contain the information described in this paragraph (D).

- 1) Total planted acreage.
- 2) Total harvested acreage.
- 3) Total acreage disposed.

SECTION 29 –COMMISSION TO RETAIN INFORMATION ABOUT GROWING LOCATIONS

A. Commission to Retain Information About Growing Locations.

- 1) The Commission shall collect and retain for a period of at least three years, the legal description, geospatial location, and Location ID information for every site or location where the Tribe has approved hemp to be grown.

SECTION 30 – REGULATIONS

A. Regulations.

- 1) Any regulations promulgated or required in accordance with this Ordinance shall comply with federal law and be submitted to Tribal Council for approval.

SECTION 31– SAVINGS CLAUSE

A. Savings Clause.

- 1) To the extent that federal law imposes any requirements for the tribal growing, processing, handling, transporting, or regulation of hemp that are inconsistent with the provisions of this Ordinance, federal law shall apply, and this Ordinance shall be amended to comply with any present or future requirements imposed by federal law related to hemp.
- 2) In the event that any phrase, provision, part, paragraph, subsection or section of this Ordinance is found by a court of competent jurisdiction to violate the Constitution or laws of the Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Ordinance, the entirety of the balance of this Ordinance shall remain in full and binding force and effect.

SECTION 32 – EFFECTIVE DATE

A. Effective Date.

- 1) This Ordinance shall be effective upon the enactment by the Tribal Council and approval of the Tribe’s Industrial Hemp Plan by the Secretary of the United States Department of Agriculture or his designee.