

# **FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

## **ORDINANCE #02/23**

### **HEMP PRODUCTION PLAN**

Adopted by Resolution #1202/23 of the Fond du Lac Reservation Business Committee on June 21, 2023.

Amended by Resolution #1303/24 of the Fond du Lac Reservation Business Committee on July 30, 2024.

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**CHAPTER 1**  
**AUTHORITY, SCOPE & PURPOSE**

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**Section 101**            **Authority**

This Hemp Production Plan (“Plan” or “Ordinance”) is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 et seq., Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and Sections 297A and 297B of the Agriculture Improvement Act of 2018, 7 U.S.C. §§ 1639o and 1639p.

**Section 102**            **Purpose**

The purpose of this Ordinance is to enable the Fond du Lac Band of Lake Superior Chippewa to act as the primary regulator of hemp production within the territory of the Band and to promote the Band’s economic development and other interests.

**Section 103**            **Reservation of Rights**

The Fond du Lac Band reserves the right to amend or repeal all or part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

**Section 104**            **Interpretation**

The provisions of this Ordinance shall be construed in a manner which is consistent with applicable provisions of the Agriculture Improvement Act of 2018 and derivative regulations.

**Section 105**            **Certification of Ability**

The Fond du Lac Band of Lake Superior Chippewa certifies that it has the resources and personnel necessary to carry out the practices and procedures of this Ordinance.

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## CHAPTER 2 DEFINITIONS

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### Section 201            Definitions

- a. Acceptable hemp THC level. “Acceptable hemp THC level” means the application of the measurement of uncertainty (“MU”) to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis that produces a distribution or range that includes 0.3 percent or less.
  
- b. Applicant. “Applicant” means an individual who, or business entity which, has applied to grow or produce hemp within the territory of the Band.
  
- c. Band. “Band” means the Fond du Lac Band of Lake Superior Chippewa.
  
- d. Cannabis. “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 total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
  
- e. Conviction. “Conviction” means any plea of guilty, *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 part, 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 part.
  
- f. Corrective Action Plan. “Corrective Action Plan” means a plan proposed by a licensed hemp producer and approved by the Fond du Lac Band of Lake Superior Chippewa Hemp Regulatory Commission and the Fond du Lac Reservation Business Committee for correcting a negligent violation or non-compliance with this Ordinance.

- g. Culpable mental state greater than negligence. “Culpable mental state greater than negligence” means to act intentionally, knowingly, or recklessly engage in conduct or cause a result that violates this Ordinance. A person acts intentionally when that person’s conscious objective is to engage in conduct or cause a result that violates this Ordinance. A person acts knowingly when that person is practically certain that their conduct or the result of that conduct will violate this Ordinance. A person acts recklessly when that person consciously disregards a substantial and unjustifiable risk that their conduct or result of that conduct violates this Ordinance. The risk must involve a gross deviation from the standard of conduct that a law-abiding person would observe in that situation.
- h. Delta-9 tetrahydrocannabinol or THC. “Delta-9 THC” means the primary psychoactive component of cannabis. For the purposes of this Ordinance, “delta-9 THC” and “THC” are interchangeable.
- i. Disposal. “Disposal” means any activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; burying plant material into the earth and covering with soil.
- j. Division. “Division” refers to the Agricultural Division of the Fond du Lac Band of Lake Superior Chippewa.
- k. Geospatial location. “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.
- l. Hemp. “Hemp” means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- m. Key Participants. “Key Participants” means the 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.

- n. Licensed Producer. “Licensed Producer” means an individual who, or business entity which, is licensed to grow or produce hemp within the territory of the Band.
- o. Marijuana. “Marijuana” or “marihuana,” as defined in the Controlled Substances Act, 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 that tests as having a THC concentration level of higher than 0.3 percent on a dry weight basis. This definition does not include hemp 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.
- p. Negligence. “Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements set forth under this Ordinance.
- q. Pre-Harvest Compliance Check. “Pre-Harvest Compliance Check” means the testing of cannabis for compliance with this Ordinance within 30 days prior to the anticipated harvest.
- r. Produce. “Produce” means to grow hemp plants for market, or for cultivation for market, in the United States.
- s. Post-Harvest Retest. “Post-Harvest Retest” means the testing of cannabis for compliance after harvest.
- t. Remediation. “Remediation” means the process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds, then re-testing retained material for compliance. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.
- u. Reverse Distributor. “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.

- v. Territory of the Band. “Territory of the Band” means (1) all land within the exterior boundaries of the Fond du Lac Reservation, notwithstanding any patents or rights of way and regardless of land ownership, and (2) any lands held in trust by the United States for the benefit of the Band or an individual or held in trust by the Band or an individual subject to restriction by the United States against alienation and over which the Band exercises jurisdiction.

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**CHAPTER 3**  
**HEMP REGULATORY COMMISSION**

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**Section 301**            **Establishment and Jurisdiction**

The Fond du Lac Band of Lake Superior Chippewa Hemp Regulatory Commission (“Commission”) is hereby established and shall exercise such authority as set forth under this Ordinance. The Commission shall have and is hereby vested with jurisdiction to administer this Hemp Production Plan.

**Section 302**            **Membership**

The Commission shall consist of three (3) members: The Director of the Agriculture Division, the Director of the Resource Management Division, and the Chief of the Fond du Lac Band Police Department. Commission members may each appoint in writing a proxy to act on their behalf.

**Section 303**            **Duties**

The Commission shall be responsible for administering this Ordinance. The Commission’s responsibilities include, but are not limited to, handling producer applications, monitoring licensed producers for compliance with this Ordinance, investigating possible violations of this Ordinance, retaining information relevant to the production of hemp within the territory of the Band, reporting required information to the relevant actors and agencies, establishing policies to effectuate this Ordinance, and fulfilling all the Band’s obligations under the Agriculture Improvement Act of 2018 and its associated regulations.

Except as prohibited in Section 304, the Commission is hereby authorized to delegate one or more of its duties to the Agriculture Division.

**Section 304**            **Non-Delegable Duties**

The Commission shall not delegate the following duties:

- a. Investigating reports of non-compliance or negligence; and
- b. Presenting findings and recommendations from investigations to the Reservation Business Committee.

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**CHAPTER 4**  
**APPLICATION & LICENSURE**

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**Section 401**            **Producer Application Information**

Applicants must be at least 18 years old. All individual applicants must provide the following information in their application to the Commission:

- a. Legal name;
- b. Date of birth;
- c. Address;
- d. Phone number;
- e. Email address (if available);
- f. A legal description of the land upon which hemp will be produced; and
- g. The land's geospatial location (to the extent possible).

All business applicants must provide the following information in their application to the Commission:

- a. Business name;
- b. Address for the principal business location;
- c. Legal names and titles of each key participant;
- d. Date of birth for each key participant;
- e. Email address (if available);
- f. Employer Identification Number;
- g. A legal description of the land upon which hemp will be produced; and

- h. The land’s geospatial location (to the extent possible).

Failure to include any of the required information may result in rejection of an application. Falsification of any information will result in the applicant being permanently ineligible from participating in the Program.

**Section 402                    Licensure Fee**

Each applicant must pay a licensure fee when submitting an application to obtain a growing license and annually for each subsequent year that the license is renewed.

**Section 403                    Background Checks**

A person with a state or federal felony conviction relating to a controlled substance may not participate in the Plan and may not produce hemp under the Plan for 10 years from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

The Commission shall conduct a national criminal background check to determine if an applicant is subject to this felony restriction and may require additional checks or reports. If an entity is applying for a producer license, each key participant must undergo a criminal background check.

**Section 404                    Producer Licensure**

Each successful applicant shall be licensed to produce hemp within the territory of the Band and shall receive a unique license number in the format prescribed by the USDA and compatible with the online reporting system, HeMP. Licenses are valid until December 31 of the year of application. Licensed producers must retain their license numbers for reporting purposes and must be prepared to provide their license numbers to the Commission whenever requested.

**Section 405                    Producer Reporting Requirements**

Each licensed producer must report the following information to the Farm Service Agency (“FSA”) and to the Commission:

- a. Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, or is

producing under multiple licenses, production information shall be provided for each location.

- b. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
- c. License number.

At the end of each growing season, producers must also report the total hemp crop acreage planted, harvested, and, if applicable, disposed or remediated to the Commission.

The Commission shall report all information related to these reporting requirements to the USDA Agricultural Marketing Service (“AMS”).

**Section 406                      Ineligibility for Producer License**

A producer that violates this Ordinance with a culpable mental state greater than negligence or that negligently violates this Ordinance three (3) times during a five (5) year period shall be ineligible for a producer license for a period of five (5) years from the date of the culpable violation or third negligent violation.

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## **CHAPTER 5 SAMPLING**

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### **Section 501            Sampling Agents**

Sampling agents shall acquire training from the U.S. Department of Agriculture (“USDA”). Licensed hemp producers may not act as sampling agents. The Commission will maintain information, available to producers, about trained sampling agents.

### **Section 502            Sampling Fees**

The Commission is hereby authorized to set a fee for sampling. Licensed producers are responsible for all fees and costs related to sampling. Applicants must pay a sampling fee upon application and subsequently for any and each additional sample performed on crops grown under the producer’s license.

### **Section 503            General Sampling Procedures**

Sampling will be conducted by a trained sampling agent within 30 days prior to the anticipated harvest date. Licensed producers may not collect or provide their own samples and may not harvest cannabis prior to sampling. Licensed producers must provide unimpeded access to sampling agents during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to 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. The producer, or an authorized representative, is allowed to be present while the sampling agent gathers samples.

Sampling agents shall follow the USDA’s standard sampling procedure (see Section 505), which involves sampling all lots for every licensed producer. Samples shall be obtained from the flowering tops of plants, when flowering tops are present, and shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant.

### **Section 504            Equipment**

Sampling agents will use the following equipment:

- a. Garden pruners/shears. Shears should be 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.
- b. Sample bags, paper. The size of the bags will depend upon the number of clippings collected per lot. The bags should be made from material known to be free from THC.
- c. Security tape.
- d. Permanent markers.
- e. Sample collection forms.
- f. GPS Unit of lot being sampled.
- g. Disposable gloves – Nitrile.
- h. Ladder.

**Section 505                      Sampling Guidelines**

Sampling agents will adhere to the following guidelines:

- a. The licensee or designated employee should be present throughout the sampling process, if possible. The licensee or designated employee should accompany the sampling agent throughout the sampling process, if possible.
- b. Time of Sampling:
  - 1) Within 30 days prior to the anticipated harvest of a designated hemp lot, an approved sampling agent shall collect representative samples from such cannabis plants for THC concentration level testing.
  - 2) If harvest is not completed within 30 days of sampling, a new sample shall be collected to verify compliance with the provisions of this Ordinance.
- c. Surveillance of the growing area:
  - 1) The sampling agent should verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the licensee to USDA.

- 2) The sampling agent should estimate the average height, appearance, approximate density, condition of the plants, and degree of maturity of the inflorescences (flowers/buds).
- 3) The sampling agent should visually establish the homogeneity of the stand to establish that the growing area is of like variety.

d. Field Sampling:

- 1) For purposes of determining the number of individual plants to select for sampling, the size of the growing area should be considered. For sampling purposes, samples from separate lots must be kept separate and not be comingled.
- 2) For lots of less than one acre, including greenhouses, select a minimum of 1 plant, then take a cutting from the plant to form a sample. For lots of 1 to 10 acres, including greenhouses, follow the chart in example 2 below, take cuttings of each plant, then combine to form a composite sample.
- 3) For growing areas larger than ten (10) acres, including greenhouses, the number of plants that should 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.
- 4) 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.

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 testing above the acceptable THC threshold and  $i$  is the proportion of hemp plants having THC content above the acceptable threshold. The values for  $i$  are based on past experience in the same or similar growing areas, and should be consistent with the requirements currently in the Final Rule.

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

$$n = \frac{n_0}{1 + \frac{(n_0 - 1)}{N}}$$

where  $n$  is the minimum number of primary plants to be selected for forming a composite sample,  $n_0$  is the initial number of primary plants estimated using the previous formula, and  $N$  is the number of acres under cultivation.

Examples 1 and 2 below describe the minimum number of samples that must be collected in order to meet the 95% confidence level requirements in the Final Rule.

Example 1: The initial primary plant sample size is 299 with a confidence level of 95% to detect hemp plants having an acceptable hemp THC level and a proportion of hemp plants having THC content above the acceptable threshold 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						
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

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	Sample Size
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) Sampling agents should always walk at right angles to the rows of plants if possible, beginning at one point of the lot and walking towards another point on the opposite side of the lot. If the lot is too dense for this to be possible, the sampling agent should take all reasonable steps to ensure that a sample is collected that represents a homogeneous composition of the lot by avoiding edges and thoroughfares.
- 6) While walking through the growing area, the sampling agent should cut at least “n” inflorescences (the flower or bud of a plant) based on the acreage of the growing area, at random but convenient distances. Avoid collecting sample specimens from the borders of the field/greenhouse.
- 7) The cut should be obtained from the flowering tops of plants, when flowering tops are present, and shall be approximately five to eight inches in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that develops into a bud) of the flowering top of the plant.
- 8) Utilize paper sample bag(s) for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings, n, as calculated by 4), or in the Example Tables 1 and 2. If one bag cannot accommodate the minimum number of cuttings due to lot size, the sample may be divided into multiple bags, but must be clearly labeled in such a way that each bag is appropriately matched with the corresponding lot. (i.e., For lot 101 with three corresponding sample bags: 101 1 of 3, 101 2 of 3, 101 3 of 3.)

- 9) Seal each bag and record the sample number and any other documentation as required by the Tribe (see Section 505(e)).
- 10) A sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.

e. Sample identification:

- 1) The sampling agent should seal each bag and record the sample identification number. The sample should also be identified with the following information: Sampling agent contact information; name and contact information of the producer; producer hemp license or authorization number; date of sample; and lot, subfield, or other identifier as provided by the USDA Farm Service Agency; any other information that may be required by states, tribes, law enforcement authorities, mail delivery services, customers or groups of customers.

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## CHAPTER 6 TESTING

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### **Section 601            Testing Laboratories**

Sampling agents will send samples to a DEA-registered laboratory chosen by the producer and that meets the following requirements:

- 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, and that the laboratory can successfully perform the testing;
- c. The demonstration of testing validity must ensure consistent, accurate analytical performance;
- d. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Ordinance;
- e. Effective disposal procedures for non-compliant samples that do not meet the requirements of this Ordinance;
- f. Measurement of uncertainty (“MU”) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty; and
- g. Sample preparation of pre- or post-harvest samples shall require grinding of samples to ensure homogeneity of plant material prior to testing.

### **Section 602            Testing Fees**

Licensed producers are responsible for any fees associated with testing or retesting.

### **Section 603            Laboratory Reporting**

Any laboratory testing cannabis for the pre-harvest compliance check or a post-harvest retest must report test results to the Commission and the USDA. These reported test results must include:

- a. Producer’s license number;

- b. Producer's name;
- c. Lot identification number for the sample;
- d. Name of the laboratory;
- e. Laboratory's DEA registration number;
- f. Date of the test;
- g. Date of the report;
- h. An indication as to whether the test is a pre-harvest compliance check or a post-harvest retest;
- i. Measurement of uncertainty; and
- j. Test result.

**Section 604                    Test Result Above Acceptable Hemp THC Level**

Any sample testing above the acceptable THC level will be conclusive evidence that the entire lot is out of compliance.

**Section 605                    General Testing Procedures**

Tests shall measure the total THC concentration in a sample submitted to a DEA registered laboratory for analysis. Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots. Laboratories will test hemp plant material for compliance using post-decarboxylation methods, such as gas or liquid chromatography, where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC. The total delta-9 tetrahydrocannabinol concentration level and measurement of uncertainty shall be determined and reported on a dry weight basis.

**Section 606                    Informal Testing by Licensed Producers**

Informal testing conducted throughout the growing season for purposes of monitoring THC concentration does not need to be reported to the USDA or the Commission.

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**CHAPTER 7**  
**ANNUAL INSPECTIONS**

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**Section 701**            **Annual Inspections**

The Commission shall conduct at least one annual inspection per 10 licenses each year of a random group of licensed growers to verify that hemp is not produced in violation of this Ordinance. The Commission shall have unrestricted access to all lots, plots, and other cultivation sites to conduct random inspections and testing of hemp or hemp products. These inspections may be conducted without notice and shall follow the same sampling and testing procedures required by Chapters 5 and 6 of this Ordinance.

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## CHAPTER 8 ENFORCEMENT

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### **Section 801**            **Non-Compliance**

Producers determined to be out of compliance with this Ordinance may be required to draft a corrective action plan pursuant to Section 804.

### **Section 802**            **Negligent Violations**

The following are negligent violations of this Ordinance:

- a. Failure to provide a legal description of land on which the producer cultivates hemp;
- b. Failure to obtain a license or other authorization required under Band law; or
- c. Production of cannabis with a total 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 total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

Producers who commit a negligent violation under this Ordinance shall be required to draft and comply with a corrective action plan pursuant to Section 804, and they shall not be referred for criminal enforcement action as a result of that violation.

### **Section 804**            **Corrective Action Plan**

Producers shall draft corrective action plans in consultation with the Commission. The Commission will provide a template corrective action plan upon request. Producers are subject to and must cooperate with additional inspections to ensure compliance with the corrective action plan.

Each corrective action plan must include the following terms:

- a. A reasonable date by which the producer shall correct the negligent violation.
- b. A requirement that the producer report to the Commission on its compliance with this Ordinance and corrective action plan for a period of no fewer than two (2) years from the date of the negligent violation.

**Section 805**                    **Disposal or Remediation**

If, after testing at a DEA-registered lab, a producer’s cannabis crop exceeds the acceptable hemp THC level but does not exceed 1.0% THC, a producer may choose either to dispose of or remediate the crop and must notify the Commission of their decision and chosen method of disposal or remediation. If the crop exceeds 1.0% THC, a producer must dispose of the crop.

Non-compliant hemp plants may be remediated by:

- a. Separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds. Until the non-compliant flowers and floral material are disposed of, the stalks, leaves, and seeds must be separated from the non-compliant floral material and clearly labeled as “hemp for remediation purposes.”; or
- b. Shredding the entire hemp plant to create “biomass.” All flowers, buds, trichomes, leaves, stalks, seed, and all plant parts from a lot should be chopped or shredded in such a way as to create a homogenous, uniform blend of the lot called “biomass.” Lots must be kept separate and not be combined during this process. This biomass must be resampled and retested pursuant to Chapters 5 and 6 of this Ordinance to ensure the biomass material tests within an acceptable THC concentration level before it may enter the stream of commerce.

If, after remediation and retesting, a crop still exceeds the acceptable hemp THC level, the crop must be disposed of.

Disposal must be conducted by either a DEA-registered reverse distributor or law enforcement. Disposal materials shall be documented, collected, and reported to the USDA consistent with the applicable law. If an employee of the Division is not present for disposal, a producer must provide the Commission with evidence of destruction such as photographs or video.

**Section 806**                    **Culpable Violations**

The Commission shall investigate whether a violation of this Ordinance was committed with the requisite culpability for this Section and present its findings and recommendations to the Fond du Lac Reservation Business Committee. The Reservation Business Committee shall determine whether a violation of this Ordinance was committed with a culpable mental state greater than negligence.

When considering whether a producer has violated this Ordinance with a culpable state of mind greater than negligence, the Commission and the Reservation Business Committee may consider what the producer said, what the producer did, how the producer acted, and any other

facts or circumstances that may aid in a determination of the producer's state of mind. Inferences that the producer intended the natural and probable consequences of acts knowingly done or knowingly omitted are permissible. Additionally, multiple negligent violations in the same growing season constitute a culpable violation of this Ordinance

Upon a finding of culpability by the Reservation Business Committee, the Commission shall report the producer that committed the culpable violation to the U.S. Attorney General and the chief of the Fond du Lac Law Enforcement Division. Producers who commit culpable violations are not entitled to a corrective action plan. Such producers may face a range of consequences including, but not limited to, licensure suspension or revocation.

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## CHAPTER 9 REPORTING

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### **Section 901            Monthly Reports**

On the first of each month, or the next nearest business day if the first falls on a weekend or holiday, the Commission shall submit a report to the USDA through the HeMP system providing the contact information and the status of the license for each producer.

The report shall include the following information:

- a. For each new individual producer, the report shall include each new producer's name, license number, phone number, and email address (if available);
- b. For each new business entity, the report shall include each new entity's name, principal business address, license number, EIN for the business, and the name, title, and email address (if available) for each key participant;
- c. If a producer's information has changed since a previous report, the report should contain the previous information and the updated information;
- d. The status of each producer's license;
- e. The period covered by the report; and
- f. If applicable, an indication that there was no change compared to the previous report.

If necessary, on the first of each month or the next nearest business day if the first falls on a weekend or holiday, the Commission shall submit a report to the USDA providing information regarding disposal and remediation of noncompliant cannabis.

The report shall include the following information:

- a. Noncompliant producer's name;
- b. Address;
- c. License number;

- d. Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation;
- e. The date the disposal or remediation was completed; and
- f. The total acreage that was disposed of or remediated.

**Section 902                    Annual Reports**

Every year, by December 15, the Commission shall submit a report to the USDA that includes the total planted acreage, the total harvested acreage, and the total acreage disposed and remediated within the territory of the Band.

**Section 903                    Information Retention**

All records, reports, and information submitted to the USDA shall be maintained by the Commission for at least three years.

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**CHAPTER 10**  
**AMENDMENT OR REPEAL**

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**Section 1001**            **Amendment or Repeal**

The Fond du Lac Reservation Business Committee retains the right to amend or repeal this Ordinance at any time.

**Section 1002**            **Significant Amendments**

Amendments that significantly and materially alter this Ordinance shall be reported to the USDA for review within 60 days. Amendments will take effect immediately upon USDA approval.

**CERTIFICATION**

We do hereby certify that the foregoing Ordinance was duly presented and adopted by Resolution #1202/23 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on June 21, 2023 on the Fond du Lac Reservation, and subsequently amended by Resolution #1303/24 on July 30, 2024; and by Resolution #1146/25 on April 1, 2025.

  
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Bruce M. Savage  
Chairman

  
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Earl Otis  
Secretary-Treasurer Pro Tem