

**LOWER SIOUX INDIAN COMMUNITY  
HEMP CODE**

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- Revised December 9, 2020, effective upon USDA approval, by Resolution 20-310 \_\_\_\_\_ (revised sections 1.7; 2.1(x); 3.1(a); 3.4(a); 3.5; 3.5(g); 4.3(b); 5.2(b); 5.2(t); 6.4; 13.2(a); 13.2(a)(3); 13.2(b); 13.2(b)(1)-(5); 13.3; 13.4(b); 13.8; 14.1-14.3).
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## **Chapter 1: General Provisions**

### **Section 1.1 Title**

This document may be cited as the “Hemp Code” or “Hemp Plan”

### **Section 1.2 Findings and Authority**

The Lower Sioux Indian Community in the State of Minnesota hereby finds and declares that:

(a) The Lower Sioux Indian Community has inherent sovereignty over its members and territories with the power and authority for self-governance.

(b) Article II of the Lower Sioux Indian Community Constitution provides, “[T]he territory of the Lower Sioux Indian Community shall be all the land now held in trust by the United States for Minnesota Mdewakanton Sioux Indians within the confines of the Lower Sioux Indian Community, and shall include such other lands as may in the future be acquired within or without said boundary lines by the Department of the Interior or by the Community for the Community’s use in the State of Minnesota.”

(c) Pursuant to Article IV of the Lower Sioux Indian Community Constitution the Community Council of the Lower Sioux Indian Community is the governing body.

(d) Article V of the Lower Sioux Indian Community Constitution authorizes the governing body to manage all economic affairs and enterprises of the Community.

(e) The Community Council of the Lower Sioux Indian Community desires to protect the political integrity, economic security, health and welfare, and public safety of the Lower Sioux Indian Community by enacting this Hemp Code to create the regulatory authority over hemp production within its territories.

(f) The Congress of the United States has enacted the Agriculture Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490 (the “2018 Farm Bill”), which recognizes the Tribe’s primary regulatory authority over the production of hemp within the Tribe’s territory, in accordance with federal and tribal laws, and a Tribal Hemp Plan approved by the United States Secretary of Agriculture.

(g) Pursuant to its inherent and Constitutional authority, the Community Council of the Lower Sioux Indian Community exercises its powers to enact this Hemp Code.

### **Section 1.3 Scope and Purpose**

This Hemp Code shall:

(a) Regulate and govern the production, possession, cultivation, processing, manufacturing, and distribution of hemp within the territory of the Lower Sioux Indian Community, and serve as the Community’s Hemp Plan or “tribal plan” described in the 2018 Farm Bill.

(b) Authorize hemp regulations and to create a tribal regulatory authority to enforce compliance with tribal and applicable federal laws.

(c) Promote the production of hemp and to regulate hemp as an agricultural commodity within the territory of the Lower Sioux Indian Community.

(d) Support economic development for the Lower Sioux Indian Community and its members through developing the hemp industry within the Lower Sioux Indian Community.

(e) Enable the Lower Sioux Indian Community, its licensees, and any potential affiliated Institutions of Higher Education, to conduct research regarding the production of hemp within the territories of the Lower Sioux Indian Community.

(f) Protect the health, safety, and welfare of the Lower Sioux Indian Community.

(g) This Code shall be liberally construed to give effect its policies and purposes.

#### **Section 1.4 Specific Applicability**

This Code shall apply to the production, possession, cultivation, processing, manufacturing, and distribution of Hemp and shall take precedence over any general laws of applicability.

#### **Section 1.5 Compliance with Tribal and Federal Law**

Nothing in this code authorizes any persons to violate any tribal or federal law or regulation. To the extent that the USDA imposes any regulatory requirements for tribal cultivation, processing, handling, transporting, or regulation of Hemp that are inconsistent with the provisions of this Hemp Code, federal law shall apply, and this Hemp Code will be amended in accordance with Section 1.12, as necessary to comply with any present or future requirements imposed by federal law related to Hemp.

#### **Section 1.6 Exemption from Prosecution for Certain Acts**

No employee of a Hemp grower shall be subject to prosecution or civil penalty in Tribal Court for cultivation, production, or distribution of Hemp in accordance with this Hemp Code and federal law.

#### **Section 1.7 No Expectation of Privacy**

No person shall have an expectation of privacy with respect to any location that is permitted under Chapter 5 of this Hemp Code. Licensees whether present or not, shall grant the HCO or other authorized Community officers and representatives, law enforcement officials, and federal authorities, access to the premises for inspection and sampling, without cause and without advanced notice.

#### **Section 1.8 Effective Date**

This Code shall be in full force and effect on the date of formal approval and adoption by the Lower Sioux Indian Community Council and approval by the Secretary of the United States Department of Agriculture or his designee.

## **Section 1.9 Sovereign Immunity**

Nothing in this Code shall be construed to limit the jurisdiction of the Tribe, Tribal Court, or Tribal Police, and nothing herein shall constitute a waiver of the sovereign immunity of the Lower Sioux Indian Community. Nor shall this Code be construed as superseding or abridging remedies provided by tribal law or the Community Council against any tribal officers, employees, or volunteers.

## **Section 1.10 Severability**

If any phrase, provision, part, paragraph, subsection, or section of this Code or its application to any person or circumstance is found by a court of competent jurisdiction to violate the Constitution or laws of the Community or any federal law, such phrase, provision, part, paragraph, subsection, or section shall be considered to stand alone and be deleted from this Code. The remainder of this Code shall remain in full and binding force and effect.

## **Section 1.11 Effect of Headings**

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

## **Section 1.12 Amendment**

This Code may be amended upon an affirmative vote of a majority of the Community Council and approval by the Secretary of the United States Department of Agriculture or his designee.

## **CHAPTER 2: DEFINITIONS**

### **Section 2.1 Definitions**

For the purpose of this Hemp Code, the following definitions apply:

(a) “Acceptable hemp THC level”. When a laboratory tests a sample pursuant to this Hemp Code, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with this Hemp Code and the requirements of applicable state or federal law is when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured total 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 with this Hemp Code and applicable state and federal law.

(b) “Applicant” means a person or persons who is authorized to sign for a business entity, who submits an application to participate in the Hemp program.

(c) “Broker” means a person or persons engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between the prospective buyers and sellers.

(d) “Commercial sales” means the sale of a product in the stream of commerce or retail or at wholesale, including sales on the internet.

(e) “Community Council” means the duly elected and authorized governing body of the Lower Sioux Indian Community in the State of Minnesota pursuant to the Lower Sioux Indian Community Constitution, as amended.

(f) “Consumable product” means a Hemp product intended for human or animal consumption.

(g) “Controlled Substances Act” or “CSA” means the Controlled Substances Act as codified in 21 U.S.C. 801 et seq.

(h) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilty 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.

(i) “Corrective action plan” means a plan issued by the Hemp Control Officer for a Licensed Hemp Producer and/or Processor to correct a negligent violation or non-compliance with a hemp production and/or processing plan and this Hemp Code. Also, a plan proposed by the Tribe for correcting violations or non-compliances with this USDA-approved Tribal Hemp Code.

(j) “Culpable Mental State Greater Than Negligence” means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.

(k) “Criminal History Report” means the individual’s Federal Bureau of Investigation’s Identity History Summary.

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

(m) “2018 Farm Bill” refers to the Agriculture Improvement Act of 2018, Pub.L. 115-334 (Dec. 20, 2018).

(n) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid (THC-A) into total delta-9-THC, the intoxicating component of non-compliant hemp. The decarboxylated value is also calculated using a conversion formula that sums total delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC- acid.

(o) “Delta-9 tetrahydrocannabinol” or “THC” is the primary psychoactive component of non-compliant hemp.

(p) “Disposal” means an activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant materials

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.

(q) “Drug Enforcement Administration” or “DEA” means the United States Drug Enforcement Administration.

(r) “Dry weight basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a non-compliant hemp item (plant, extract, or other derivative), after excluding moisture from the item.

(s) “GPS” means global positioning system.

(t) “Handle” or “Handling” means to cultivate or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. “Handle” also includes the disposal of non-compliant hemp plants that are not hemp for purposes of chemical analysis and disposal of those plants.

(u) “Handler” means a person or entity which handles Hemp.

(v) “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 location; or (2) cultivated in a portion or portions of one contiguous production area within a location. Harvest lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.

(w) “Harvest Lot Identifier” means a unique identifier used by the Tribe to identify the harvest lot.

(x) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(y) “Hemp Control Officer” or “HCO” means an officer acting as the hemp regulatory authority for the Community to enforce the provisions of this Hemp Code and federal Hemp Regulations within the territory of the Lower Sioux Indian Community.

(z) “Hemp crop” means one (1) or more unprocessed Hemp plants or plant parts.

(aa) “Hemp grower” or “Hemp Producer” means a person licensed by the Tribe to produce, grow, and cultivate Hemp within the Tribe’s territory.

(bb) “Hemp ingredient” means all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers of any part of the Hemp plant as Hemp is defined in this Section 2.

(cc) “Hemp product” means a value-added product with an Acceptable Hemp THC level, that is derived from, or made by, processing a Hemp crop, and that is prepared in a form available for commercial use. The term includes, but is not limited to cosmetics, personal care products, consumable products, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing

one or more Hemp ingredients such as cannabidiol.

(dd) “Hemp program” means the Hemp production program carried out under this Hemp Code.

(ee) “Information sharing system” means the database mandated under the 2018 Farm Bill which allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

(ff) “Institution of higher education” has the meaning assigned to it by 20 U.S.C. § 1001 and shall expressly include tribal institutions.

(gg) “Intended for consumption” means intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.

(hh) “Key participants” means a sole proprietor, a partner in partnership, a person with executive managerial control in a corporation, or a principal investigator or lead researcher in charge of an industrial hemp research project. 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. This definition also does not include a member of the leadership of the Tribe who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

(ii) “Law enforcement agency” means the Lower Sioux Indian Community Police Department, DEA, or other federal or state local law enforcement agency.

(jj) “License” means a valid license issued by the Lower Sioux Indian Community to grow, broker, handle, store, process, transport, or market Hemp.

(kk) “Licensee” means Hemp Grower, Broker, Handler, or Processor as those terms are defined in this Section 2.

(ll) “Location” means a contiguous lot, parcel, or tract of land within the territory of the Lower Sioux Indian Community on which a Hemp grower cultivates Hemp. A location may include land and buildings that are not used to cultivate Hemp. The term location also means the terms “farm,” “tract,” “field,” and “subfield” as these are terms used by FSA in 7 CFR 718.2 to define a lot.

(mm) “Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

(nn) “Permit” means a certificate issued in accordance with a two-step review process by the Community’s Land Department and the HCO, as further outlined in Chapter 6 of this Code. A Location Permit authorizes use of a specifically described location for Hemp related activities. A permit does not authorize Hemp related activities.

(oo) “Person” means any individual or entity.

(pp) “Process” or “processing” means rendering hemp plants or plant parts from the natural or original state after harvest by refinement such as, but not limited to, decortication, devitalization,

extraction, crushing, or packaging.

(qq) “Processor” or “Processor Facility” means a person or entity that converts raw hemp into a hemp product.

(rr) “Produce” means to grow Hemp plants for market, or for cultivation for market, in the United States.

(ss) “Propagule” means a plant or plant part that can be utilized to grow a new Hemp plant.

(tt) “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. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

(uu) “Territory” means those lands which meet the definition contained in 18 U.S.C. §1151 and any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual member of the Tribe or held by the Tribe or an individual member of the Tribe subject to restriction by the United States against alienation and over which the Tribe exercises jurisdiction.

(vv) “Sampling Agent” means an individual trained under applicable USDA, State, or Tribal training procedures in the process of entering a growing area and collecting plant specimens necessary to represent a homogenous composition of the “lot” that is to be sampled.

(ww) “Tribe” or “Community” means the Lower Sioux Indian Community in the State of Minnesota.

(xx) “THC” means tetrahydrocannabinol and has the same meaning as total delta-9 tetrahydrocannabinol.

(yy) “USDA” means the United States Department of Agriculture.

(zz) “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

### **CHAPTER 3: LOWER SIOUX INDIAN COMMUNITY HEMP REGULATORY AUTHORITY**

#### **Section 3.1 Establishment of the Lower Sioux Hemp Regulatory Authority**

(a) The Lower Sioux Indian Community hereby establishes and authorizes the Hemp Control Officer (HCO) to act as the hemp regulatory authority for the Community to enforce the provisions of this Hemp Code and federal Hemp Regulations within the territory of the Lower Sioux Indian Community in the State of Minnesota.

(b) Any person engaging in activities related to Hemp within the territory of the Lower Sioux Indian Community, including without limitation, growing, processing, handling, transporting, or storing Hemp, shall only do so pursuant to a valid license issued under this Hemp Code or proper authorization from another jurisdiction. The regulations and penalties imposed by this Hemp Code

extend to any person engaged in activities related in any way, directly or indirectly, to Hemp within the Lower Sioux Indian Community, whether licensed or not; with the exception that nothing herein prohibits the lawful transportation or shipment of hemp or hemp products produced in accordance with Subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) throughout the Lower Sioux Indian Community territory.

### **Section 3.2 Hemp Control Officer**

The HCO shall be vested with the authority to license and manage the possession, cultivation, transportation, production, and use of hemp and hemp products within the territory of the Tribe, consistent with this Hemp Code and federal Hemp Regulations. The Tribe will provide or arrange for the HCO to have adequate training, equipment, staff, and compensation to fully perform the duties described in the Hemp Code.

### **Section 3.3 Qualifications**

The HCO must meet the following criteria and qualifications:

- (a) Not have been found guilty of or entered a plea of nolo contendere or guilty to any felony or drug related misdemeanor under Tribal, federal, or state law within the previous ten (10) years.
- (b) Be free from any financial interests or financial ties with any persons, companies, or businesses involved in the hemp industry, or from circumstances that will create or appear to create a conflict of interest or adversely affect their performance as the HCO.
- (c) May not be an employee or associate of any Hemp operation or business.
- (d) May not be a Hemp contractor (including any principal of a management or other contracting company).

### **Section 3.4 Term of Office and Vacancies**

- (a) The HCO shall be appointed by the Community Council and serve as the Hemp regulatory officer for the Community until removed by the Community Council or the position is abolished by the Community Council. The Community Council may remove the HCO for cause upon a majority vote. Conviction of a felony or drug related crime shall automatically cause removal of the HCO. The Community Council's decision to remove the HCO, pursuant to this section, is not subject to appeal.
- (b) The Community Council shall appoint a new HCO when the position becomes vacant.

### **Section 3.5 Duties and Authority of the Hemp Control Officer**

The Community Council delegates limited authority to the HCO as a regulatory officer of the Community and shall have the power and responsibility necessary and proper to carry out the purposes set forth in this Hemp Code and to enforce the provisions of this Hemp Code and applicable federal Hemp Regulations. This limited authority shall not regulate the Community Council or any Tribal

entities except with respect to their activities involving Hemp-related operations and activities. The duties and limited authority vested to the HCO include, but are not limited to:

- (a) Providing applicants with information necessary to submit a complete application.
- (b) Approving or denying license applications, issuing or suspending licenses, enforcing license requirements and conditions in a manner consistent with this Hemp Code.
- (c) Assessing and evaluating the potential environmental impacts of applicants' proposed operations.
- (d) Inspecting, examining, and monitoring all Hemp imports (including the import of seeds, plants, and Propagules), cultivation, handling, transportation, storage, and all other Hemp-related operations and activities. This includes performing Tribal testing and inspections including random inspections.
- (e) Maintaining a list of sampling agents that are trained using USDA, State, or Tribal training procedures and providing such list to producers upon request.
- (f) Obtaining the assistance of the Lower Sioux Police Department, DEA-approved laboratories as of December 31, 2022, agricultural or environmental consultants or other third parties as necessary to properly regulate Hemp production under this Hemp Code.
- (g) Insuring, at a minimum, annual inspections of a random sample of Producers to verify that Hemp is not being produce in violation of this Plan.
- (h) Collecting, developing, maintaining, and filing all appropriate or required records related to Hemp activities within the Tribe's Territory and submitting all required reports to the Community Council, law enforcement, and the USDA.
- (i) Ensuring compliance with all Tribal and Federal laws, rules and Regulations regarding Hemp. This includes working cooperatively with USDA, the FSA, and federal and Tribal law enforcement, developing and maintaining all required records and filing all required federal and Tribal reports, and cooperating fully with all federal inspections and audits of Hemp activities within the Tribe's Territory.
- (j) Investigating any suspicion of wrongdoing associated with any Hemp activities and reporting any potential criminal violations to the U.S. Attorney General, and applicable law enforcement.
- (k) Supervise the destruction of all Hemp crops that are to be destroyed pursuant to the provisions of this Hemp Code or federal law.
- (l) Providing written notice of adverse decisions to applicants and Licensees.
- (m) Imposing and collecting necessary relevant fees and/or penalties.

(n) Developing policies, procedures, protocols, and forms necessary to fulfill the requirements and intent of this Hemp Code. Subject to Section 1.12 of this Hemp Code, these policies, procedures, protocols, and forms shall be incorporated into the Tribal Hemp Regulations.

(o) Complying with all mandatory reporting, recordkeeping, and USDA audit requirements provided under this Hemp Code and outlined under the 2018 Farm Bill, the Final Rule, and other applicable federal laws.

(p) Ensuring that the Tribe prepares for and cooperates fully with all federal inspections and USDA auditors.

(q) Providing written quarterly reports to the Community Council on Hemp production occurring pursuant to this Hemp Code, including the amount of land under cultivation, a profile of licensees, revenue generated by Hemp production, any violations of applicable laws related to Hemp productions currently, including violations under investigation, and any resources necessary to expand Hemp production and to improve the Tribe's regulation of Hemp.

## **CHAPTER 4: LICENSING**

### **Section 4.1 License Required**

Any person processing, producing or intending to produce hemp must have a valid license prior to processing, producing, cultivating, or storing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

### **Section 4.2 Licensing Authority and Regulation**

All Hemp License Applications shall be submitted to the HCO, who shall review the application and either approve or deny the application based on the criteria set forth in this Hemp Code. Any person or Key Participant with a felony conviction relating to a controlled substance, in any jurisdiction, shall not be eligible for any type of tribal hemp license and is prohibited from participating in the plan, processing, or producing hemp for 10-years following the date of conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

### **Section 4.3 License Application Contents**

The applicant shall provide the information requested on the application form, including:

(a) The applicant's full name, residential address, telephone number, and email address, if an email address is available.

(b) If the applicant represents a business entity or the Community, the full name of the business or entity (if applicable), the principal business location address, EIN number, the full name, title, and email address (if available) of each individual who will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report.

(c) Documentation showing the Community's Land Department has issued a preliminary approval of the location permit request.

(d) Street address, Location ID, legal description and, to the extent practicable, the Geospatial Location coordinates for each field, greenhouse, building, or location where Hemp will be produced, handled, processed or stored.

(e) Information regarding any other Hemp growing location or processing facility that is licensed in any other jurisdiction and a copy of the license(s).

(f) A listing of all persons who have a direct or indirect involvement in the Hemp or Hemp related activities or who otherwise fall into the category of a Key Participant in the proposed activity.

(g) Information regarding the status of the Key Participant's prior or current applications, licenses, or permits issued by any other jurisdiction. Status information includes, without limitation, application, license, or permit denials and/or revocations.

(h) The proposed acreage or greenhouse or indoor square footage to be produced or used for processing.

(i) A description of the type of facility proposed and the anticipated or actual number of employees. The name of the proposed manager of the facility.

(j) A description of the type of activity proposed for processing and/or description of the proposed Hemp product and intended market for the Hemp product.

(k) A security plan which shall include a general description of the security systems(s), fencing, and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements.

(l) A list of pesticides, and other chemicals proposed for use.

(m) A plan for the disposal of Hemp, chemicals and related byproducts.

(n) Planned source of seeds or propagules.

(o) Proof of general liability insurance and any other insurance obtained by the applicant.

(p) Consent to comply with all requirements of this Hemp Code, Tribal law or policy or by federal regulation.

(q) Any other information or disclosure required by Tribal law or policy or by federal regulation.

#### **Section 4.4 Application Processing**

(a) The HCO shall review the application for completeness and compliance with this Hemp Code and applicable tribal and federal law.

(b) Any license application that is missing required information shall be subject to denial.

(c) Any person who materially falsifies any information contained in an application shall be ineligible to participate in Hemp production under this Hemp Code.

(d) The HCO shall notify applicants by letter or email whether the application has been denied or conditionally approved.

(e) The HCO shall assign each licensee with a license or authorization identifier in a format prescribed by USDA.

#### **Section 4.5 Background Checks**

All license applicants and all of the Key Participants in their proposed activities must undergo a Criminal History Report as part of an application for licensing. The HCO may require such other background checks as it deems necessary or appropriate. When a person or entity applies for a license, Key Participants must each submit to those relevant background checks.

### **CHAPTER 5: LICENSE AGREEMENTS**

#### **Section 5.1 License Agreement Required**

An applicant shall not be Licensed until the applicant is finally approved and the applicant and the HCO have executed a Production or Processor/Handler License Agreement.

#### **Section 5.2 Agreement Contents**

Any License Agreement shall contain at a minimum:

(a) The Licensee's full name, residential address, telephone number, and email address, if an email address is available.

(b) If the Licensee represents a business entity or the Community, the full name of the business or entity (if applicable), the principal business location address, the full name, title, and email address (if available) of each individual which will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report and agreement to advise the HCO when a Key Participant leaves or joins the licensee.

(c) The agreement shall contain the Licensee's consent to entry onto the Permitted location and to the inspection and sampling pursuant to this Hemp Code of all premises where Hemp or other Non-compliant hemp plants or materials are located, or Licensed to be located, by the HCO, representatives of the HCO, law enforcement agencies, and USDA inspectors with or without cause, with or without advance notice.

(d) The Licensee consents to forfeiture and destruction, without compensation, of:

1. Material found to have an acceptable hemp THC level in excess of zero and three-tenths (0.3) percent on a Dry Weight Basis.

2. Hemp whether growing or not growing located in an area that is not permitted by the Tribe.
3. Hemp whether growing or not growing not accounted for in required reporting to the HCO.

(e) The Licensee agrees to apply for a separate Permit for each growing, Processing, Handling, Production and storage location, which shall include a legal description of the location, Geospatial Location (to the extent practicable), the Hemp seeds or Propagules to be used, or the activities to be conducted at the location and receive approval for each of those Permits prior to having Hemp on those premises.

(f) The Licensee acknowledges that all Licensed Producers or Processors/Handlers shall submit a Location Modification Request Form, and obtain prior written approval from the Community Land Department representative and the HCO before implementing any change to the Licensed locations or Hemp Varieties or Strains stated in the License Agreement.

(g) Acknowledgement by the Licensee that Hemp shall not be grown, Processed, Handled, or stored in any location other than the location listed in the License Agreement or Permit.

(h) Agreement by the Licensee not to interplant Hemp with any other crop without express written permission from the HCO.

(i) Acknowledgement by the Licensee that anyone applying Pesticides to Hemp shall hold any required Pesticide License and apply Pesticides in accordance with Tribal Ordinances or Tribal or federal regulations.

(j) Acknowledgement by the Licensee that the Licensee shall comply with restrictions established by the HCO limiting the movement, Handling, transportation or Processing of Hemp plants and plant parts.

(k) Acknowledge that the risk of financial or other loss shall be borne solely by the Licensed Producer and/or Processor.

(l) Agreement that any time Hemp is in transit, a copy of the Producer and/or Processor Licensing Agreement shall be available for inspection upon the request of a representative of the HCO or a Law Enforcement Agency. Post cultivation the Hemp transported shall in accordance with Chapter 12 of this Hemp Code and shall be accompanied by a copy of the report of the laboratory test results on the Hemp being transported.

(m) Agreement that, upon request from a representative of the HCO or a Law Enforcement Agency, a Licensed Producer and/or Processor shall immediately produce a copy of the License Agreement for inspection.

(n) Agreement to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and any other reports required by the HCO, the FSA or the USDA, to which the Producer and/or Processor has agreed, on or before the deadlines established in this Plan.

(o) Agreement to scout and monitor adjacent unregistered fields for volunteer non-compliant hemp plants and to destroy those volunteer non-compliant hemp plants for three (3) years past the last date of planting reported to the HCO.

(p) Agreement not to employ or to rent land to cultivate Hemp from any person who had a Tribal Hemp License revoked or denied for one (1) or both of the following reasons:

1. Failure to obtain an acceptable Criminal History Report; or
2. Failure to comply with an order from a representative of the HCO.

(q) Agreement to notify the HCO of any Hemp-related interaction with law enforcement immediately by phone and to follow-up in writing within three (3) calendar days of the occurrence.

(r) Agreement to notify the HCO of any theft of Non-compliant hemp materials, whether growing or not.

(s) Agreement to pay all fees imposed by the Tribe.

(t) Failure to agree or comply with terms and conditions established in Producer licensing and/or Processor agreement shall constitute grounds for the withdraw of conditional approval, suspension or termination of the License, an HCO report to law enforcement or the USDA, or other appropriate HCO or Community Council action.

(u) Failure to agree and sign the Producer licensing and/or Processor agreement shall terminate conditional approval and a licensing agreement shall not be executed.

(v) The signatures of the Tribe and Licensee(s).

### **Section 5.3 Operating Fees.**

Licensees shall pay the Tribe and the HCO such fees and taxes as the Tribe may establish at the time and location as the Community Council shall mandate.

## **CHAPTER 6: LOCATION PERMITS**

### **Section 6.1 Location Permits Required**

A Permit is required for each location Hemp is cultivated, handled, processed, or stored.

### **Section 6.2 Permitting Authority and Regulation**

All Location Permit requests shall be submitted to the Community's Land Department, who shall review the request and either deny the request or issue a preliminary approval. A preliminary approval means the location is not encumbered and is available for use. The Community's Land Department will forward its preliminary approval to the HCO. The Community Land Department shall develop a location permit request form and the criteria for denial or preliminary approval. These forms and processes shall be incorporated into this Hemp Code. The HCO retains the discretion to issue or deny

permits in accordance with this Hemp Code and any other Community laws, regulations, or policies. Location Permits authorize use of the location but does not authorize Hemp related activity.

### **Section 6.3 License Required**

Permits may only be issued to individuals or entities with a valid license to process, produce, cultivate, or store hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

### **Section 6.4 Location Access**

Any location that is permitted under this Chapter 6 shall be accessible to the HCO or other authorized Community officers and representatives, law enforcement officials, and federal authorities, for inspection and sampling, without cause and without advanced notice.

## **CHAPTER 7: SEEDS OF WILD, LANDRACE, OR UNKNOWN ORIGIN**

### **Section 7.1 Seeds of Wild, Landrace, or Unknown Origin**

(a) A person shall not acquire or grow Hemp or Non-compliant hemp seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the HCO.

(b) The HCO shall not permit Hemp or Non-compliant hemp seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the HCO first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the HCO or its designee.

(c) Any Licensed Producer or Licensed Processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a Non-compliant hemp plant of wild, landrace, or unknown origin, without advance written permission from the HCO shall be subject to suspension or revocation of his or her License and forfeiture without compensation of his or her Hemp as well as the wild seed and propagules including any cultivated Non-compliant hemp or Hemp from that variety.

## **CHAPTER 8: INFORMATION SHARING, REPORTING, AND RECORDKEEPING**

### **Section 8.1 Reporting Requirements of HCO to the Community Council**

At a minimum, the HCO must collect and maintain records and report on the following:

(a) All information required in this Hemp Code, and all Tribal Ordinances and Regulations related to Hemp including all information related to the Hemp producing and processing locations including the legal description and Location ID and geospatial coordinates for every location where the Tribe has approved Hemp to be produced or processed.

(b) Information about approved growing, processing, handling, and storage site locations must be reported to the Community Council, the DEA, and other law enforcement agencies whose representatives request registered location information.

(c) All applications for licensure, grants or denials of licenses, receipts of fees, distribution of fees and revenues must be reported to the Tribe.

(d) A monthly report to the Community Council summarizing the HCO's official actions, activities, investigative reports, License suspensions or revocations, findings of negligence or potentially criminal activities, and reports received from any Hemp licensee.

(e) Any and all reports requested by USDA.

## **Section 8.2 HCO Reporting Requirements for Hemp Grower Licenses to the USDA**

(a) The HCO shall submit to the United States Secretary of Agriculture or the Secretary's designee, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each Hemp grower under this code. If the first of the month falls on a weekend or holiday, the report shall be submitted by the first business day following the first of the month. The report shall contain:

1. For each new Hemp grower who is an individual and is licensed or authorized under this code, the report shall include the individual's full name; license identification number; Employee Identification Number ("EIN") of the business entity, business address; telephone number; email address (if available); and a legal description of the land on which the Hemp grower is producing or intends to produce Hemp including, to the extent practicable, its geospatial location.
2. For each new Hemp grower or processor that is an entity and is licensed or authorized under this code, the report shall include the entity's full name; license identification number; principal business location address business address; 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; and a legal description of the land on which the Hemp grower is producing or intends to produce Hemp including, to the extent practicable, its geospatial location.
3. For each Hemp grower or processor that was included in a previous report and whose reported information has changes, the report shall include the previously reported information and the new information.
4. The status and number of each Processor's or Producer's License.
5. The period covered by the report.
6. An indication that there were no changes during the current reporting cycle, if applicable.

## **Section 8.3 HCO Reporting Requirements for Hemp Disposal or Remediation to the USDA**

(a) Monthly Reports. The HCO shall submit to the United States Secretary of Agriculture or the Secretary's designee, by the first of each month, a report notifying the USDA of any occurrence of non-conforming plants or plant material and providing a disposal or remediation record of those

plans and materials. If the first of the month falls on a weekend or holiday, the report shall be submitted by the first business day following the first of the month. The report shall contain:

1. Name and address of the Licensee.
2. The license number of Licensee.
3. Location information, such as harvest lot identifier, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation.
4. Information on the agent handling the disposal or remediation.
5. Disposal or remediation completion date.
6. Total acreage.

(b) Annual Report. The HCO shall submit an annual report to USDA. The report shall be submitted by December 15 of each year and contain the following information:

1. Total planted acreage.
2. Total harvested acreage.
3. Total acreage disposed and remediated.
4. Other such information as the USDA may request.

#### **Section 8.4 HCO Record Retention Requirements**

The HCO shall keep copies of the forms and information submitted to the USDA for at least three (3) years in a manner such that it can be readily provided upon request.

#### **Section 8.5 Hemp Grower Recordkeeping and Reporting Requirements to the HCO**

Hemp growers must submit the following information and reports to the HCO:

(a) Any changes of contact information must be reported, in writing, within fourteen (14) days of the change.

(b) Planting Report. Within fourteen (14) days after planting any Hemp, each Hemp grower shall submit, on a form provided by the HCO, a planting report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of Hemp planted.

(c) Pre-Harvest Notification: At least fourteen (14) days prior to harvest, each Hemp grower shall submit a pre-harvest notification, on a form provided by the HCO, that includes the projected harvest date(s) and location(s) of each variety of Hemp cultivated within a location. A Hemp grower must notify the HCO immediately of any changes in the reported harvest date(s) in excess of seven (7) days.

(d) **Post-Harvest Report:** Within fourteen (14) days post-harvest, each Hemp grower shall submit a Post-harvest report to the HCO, on a form provided by the HCO that includes the actual harvest date(s) and location(s) of each variety of Hemp harvested within a location.

(e) A Hemp grower must retain all documentation of sampling and testing for at least three (3) years in a manner such that it can be readily provided to the Tribe upon request.

(f) The applicant or Hemp grower must report to the HCO any felony convictions of any individual listed on the application, to include Key Participants, relating to controlled substances under state, federal, or tribal law within five (5) business days of receiving notice of such conviction. Upon receiving such notification the applicant or Hemp grower shall take action to ensure compliance with this Hemp Code and applicable federal laws and regulations.

(g) Upon revocation of a license or dissolution of a Hemp grower, the Hemp grower is required either to maintain a copy of all licenses, sampling and testing results and transportation logs in a secure location, the address for which is provided to the HCO for a period of three (3) years or provide them to the HCO.

## **Section 8.6 Laboratory Reporting Requirements to the USDA**

Each Hemp grower must ensure that the laboratory that conducts the test of the sample(s) from its location reports the test results to the USDA. As of December 31, 2022, each Hemp grower must ensure that a DEA-registered laboratory conducts the test of the sample(s) from its location and reports the test results to USDA. However, informal testing conducted throughout the growing season for purposes of monitoring THC concentration does not need to be reported to the USDA. The test results report shall contain the following information for each sample tested:

- (a) Hemp grower's license and permit number.
- (b) Name of Hemp grower
- (c) Business address of Hemp grower.
- (d) Harvest lot identifier for the sample.
- (e) Name of laboratory. As of December 31, 2022, include laboratory's DEA registration number.
- (f) Date of test and report.
- (g) Identification of a pre-harvest or post-harvest retest.
- (h) Test results including MU.

## **Section 8.7 Hemp Grower Reporting Requirements to the USDA Farm Service Agency**

All Hemp growers must report Hemp crop acreage to the USDA Farm Service Agency (“FSA”) pursuant to USDA guidelines and shall provide, at minimum, the following information:

- (a) Street address and geospatial location for each location or greenhouse where hemp will be produced.
- (b) Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
- (c) License identification number.
- (d) Total acreage of hemp planted, harvested, and disposed or remediated.

### **Section 8.8 Transportation Log**

Hemp growers must maintain a transportation log documenting each occurrence when Hemp crops are transported whenever to or from a location. The transportation log shall conform to the following:

- (a) Transportation logs shall include dates and times of transportation and delivery of Hemp crops and products, the names of individuals transporting, the manager on duty, any loss or damage to the crop during transport or delivery, and certification of the recipient of the Hemp crop or product as well as the manager of the recipient.
- (b) Transportation logs shall be kept up to date daily and shall be maintained for a period of three (3) years from the last growing season. The HCO may inspect the transportation log at any time.
- (c) The Hemp grower shall give the HCO access to the transportation log at any time upon request.

## **CHAPTER 9: HARVESTING, SAMPLING, AND TESTING**

### **Section 9.1 Pre-Harvest Sampling Required**

Pre-harvest sampling shall conform to the following:

(a) Within thirty (30) days prior to the anticipated harvest of non-compliant hemp plants, including Hemp, the Producer shall contact the HCO to arrange for the Tribal law enforcement agency or other Tribal Sampling agent to collect samples from the flower material from such non-compliant hemp plants for total delta-9 tetrahydrocannabinol (THC) concentration level testing at a laboratory. As of December 31, 2022, the Tribal Sampling agent must send the samples for testing at a DEA-registered laboratory. Collection of the samples shall be completed pre-harvest.

(b) The method used for sampling from the flower mater material of the non-compliant hemp plant must be sufficient at a confidence of 95 percent that no more than one percent (1%) of the plants in the harvest 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 harvest lot.

(c) During a scheduled sample collection, the Producer or an authorized representative of the Producer shall be present at the collection site if possible.

(d) All licensees must provide sampling agents with complete and unrestricted access during business hours to all hemp and other non-compliant hemp plants, whether growing or harvested, to areas where hemp is grown and stored, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp, seeds, and other non-compliant hemp plants, and all locations listed in the Producer's license and permit(s).

(e) A Producer shall not harvest any non-compliant hemp crop, including Hemp, prior to pre-harvest sampling being taken.

(f) Sampling agents must be trained using USDA, State, or Tribal training procedures. The HCO will have information available to producers, about trained sampling agents.

## **Section 9.2 Sampling Procedure**

(a) Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determine whether the specimens are hemp or marijuana. The measurements are intended to be representative of the THC content in a harvest lot of hemp crop acreage as identified by the Producer. Hemp Producers may not harvest hemp prior to the hemp being sampled and tested for THC concentration. Testing procedures are provided in Section 9.3 of this Hemp Code.

(b) 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. Samples of hemp plant material from one harvest lot shall not be commingled with hemp plant material from other harvest lots.

(c) Sampling Guidelines. Sampling shall be completed in accordance with the "Sampling Guidelines for Hemp US Domestic Hemp Production Program Issued January 15, 2021." Samples of hemp plant materials from one harvest lot shall not be commingled with hemp plant materials from other harvest lots.

## **Section 9.3 Testing**

(a) The HCO, acting on behalf of the Community, shall contract with one or more testing laboratories which have the ability to, at a minimum, conduct analytical testing of samples for THC concentration levels and must use post-decarboxylation or other similarly reliable methods approved by the USDA. The testing methodology must consider the potential conversion of total delta-9 tetrahydrocannabinolic acid (THCA) in hemp into total delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph include, but are not limited to, gas or liquid chromatography with detection.

(b) Analytical testing for the purposes of detecting the concentration levels of THC shall meet the following standards:

1. Laboratory quality assurance must ensure the validity and reliability of test results.
2. 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.
3. The demonstration of testing validity must ensure consistent, accurate analytical performance.
4. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Hemp Code.
5. Effective disposal or remediation procedures for non-compliant samples that do not meet the requirements of this part.
6. Sample preparation of pre- or post- harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing. Sample preparation must follow a procedure described by USDA.
7. After December 31, 2022, only laboratories registered with the DEA may conduct testing under this section.

(c) The total THC concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty 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.

(d) Any sample test result exceeding the Acceptable Hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Hemp Code and the non-compliant hemp plants shall be disposed of or remediated in accordance with the Remediation and Disposal Guidelines for Hemp Growing Facilities U.S. Domestic Hemp Production Program Issued January 15, 2021.

1. The producer shall notify the HCO and the USDA of the producer's decision to either destroy or remediate the non-compliant lot and the method that will be used to destroy or remediate the non-compliant lot.
2. The disposal must be conducted either by using a DEA-registered reverse distributor or law enforcement; or on site at the location or hemp production facility.
3. The disposal or remediation of the non-compliant hemp plant shall be verified by the HCO. This may be through in-person verification by the HCO, or alternative methods such as through pictures, videos, or other proof of successful disposal or remediation.
4. If the producer elects to perform remediation activities, an additional sampling and testing of the post-remediation crop must occur to determine THC concentration levels.

#### **Section 9.4 Operating Minimum**

A Licensed grower or Producer shall not plant Hemp in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the HCO.

### **Section 9.5 Public Access to Hemp Restricted**

Licenses shall not allow the unsupervised public on permitted locations.

## **CHAPTER 10: DISPOSAL OR REMEDIATION OF NON-COMPLIANT PLANTS AND MATERIAL**

### **Section 10.1 Disposal or Remediation Procedure and Reporting**

(a) Non-compliant hemp plants testing higher than the Acceptable Hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (“CSA”), 21 U.S.C § 801 *et. seq.* and must be disposed of or remediated in accordance with this Hemp Code.

(b) Licensees must notify the HCO of their intent to dispose or remediate non-conforming plants and verify disposal or remediation by submitting appropriate documentation and evidence to the HCO, including:

1. Name and address of the Licensee.
2. The License number of the Licensee.
3. Location information, such as Harvest lot number, location type, and Geospatial Location or other location descriptor for the production area subject to disposal or remediation.
4. Information on the agent handling the disposal or remediation.
5. Method of disposal or remediation.
6. Disposal or remediation completion date.
7. Total acreage.

(c) The HCO shall submit a report of hemp disposal or remediation in accordance with Section 8.3 of this Hemp Code.

### **Section 10.2 Expense of Crop Disposal or Remediation**

The Licensee shall be responsible for the cost of any crop disposal or remediation.

## **CHAPTER 11: FEES**

### **Section 11.1 Fees**

The HCO shall collect annual fees for licenses and location permits as follows:

Hemp License	\$150.00
Each Location Permit	\$250.00
Each Additional Inspection for THC Testing Beyond First Harvest	\$250.00
Each Additional Sample for THC Testing Beyond First Harvest	\$175.00
License Change Fee	\$ 50.00

## **CHAPTER 12: TRANSPORTATION REQUIREMENTS**

### **Section 12.1 Transportation Requirements**

Licensees are responsible for the transportation of a hemp crop must ensure that the following documentation accompanies the hemp crop at all times during transport:

- (a) A copy of the hemp grower license that corresponds to the harvest lot from which the hemp originated.
- (b) A copy of the pre-harvest test results or Remediation Test Results that correspond to the harvest lot in transit as identified by the harvest lot identifier that accompanies the hemp crop.
- (c) A copy of a transport log which includes the intended destination, and any relevant legal license application information regarding the receiver.

## **CHAPTER 13: RESEARCH**

### **Section 13.1 Regulation of Research Productions**

- (a) Any person who seeks to produce hemp for research purposes shall be required to obtain a license and adhere to the same requirements as other Licensees. The Key Participant shall be the principal investigator or researcher in charge of the industrial hemp research project.
- (b) Any person applying for a license to research hemp must submit a summary to the HCO outlining their objectives that demonstrates to the HCO's satisfaction that research of hemp is being performed, a timeline of activities, and a compliance sampling plan that demonstrates a confidence level of 95% that no more than one percent of the plants in each Lot planted will exceed the acceptable hemp THC level. Research projects that handle non-compliant hemp must register with the Drug Enforcement Agency, follow the Controlled Substance Act requirements for handling non-compliant hemp, and shall dispose of the hemp that tests over the 0.3 acceptable hemp THC level at the end of their study.
- (c) Compliance sampling plans must also demonstrate a process for collecting a representative sample that is a homogeneous composition of the Lot and provide a disposal plan in compliance with this Code for any cannabis plants that are found to exceed the acceptable hemp THC level. While it is acceptable to use different sampling techniques for quality assurance and research and development purposes, it is not acceptable to use these different sampling techniques for compliance under the plan.

(d) Research licensees must provide testing data to the HCO when requested and may be subject to inspection, sampling and testing by the HCO.

(e) Hemp that is grown for research purposes may not be offered for sale or enter the stream of commerce.

(f) The HCO will conduct a site and/or records inspection of all licensees of this type on an annual basis to determine compliance with requirements under this Chapter. Licensees are also subject to official sampling if deemed necessary as a result of the site/records inspection.

## **CHAPTER 14: VIOLATIONS**

### **Section 14.1 Violations Subject to Enforcement**

A violation of this Hemp Code shall be subject to enforcement in accordance with this Chapter, tribal law, and all applicable federal, state and local laws, regulations, rules and other requirements.

### **Section 14.2 Negligent Violations**

(a) A person shall be subject to penalties if the HCO determines that the person has negligently violated the requirements or conditions of its license or this code, including, but not limited to:

1. Negligently failing to provide an accurate legal description of land where hemp is produced;
2. Negligently failing to obtain a license, license renewal or other required authorization from the HCO; or
3. Unintentional production or possession of non-compliant hemp (marijuana) exceeding the Acceptable Hemp THC level. A person does not commit negligent violation under this Chapter or Chapter 10 if they made reasonable efforts to grow hemp and the non-compliant hemp (marijuana) does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis and they comply with Chapter 10 of this Code.

(b) For each negligent violation the HCO will issue a Notice of Violation (NOV) and require a corrective action plan for the person to follow. A person who receives a NOV shall complete the corrective action plan to cure the negligent violation. Corrective action plans issued by the HCO shall include, at a minimum, the following information:

1. A reasonable date by which the person shall correct each negligent violation.
2. A requirement for periodic reports from the person to the HCO about the person's compliance with the corrective action plan, this Code, and other applicable statutes and administrative regulations for a period of not less than two (2) years from the date of the NOV.

3. A person that negligently violates this Hemp Code may not be subject to criminal enforcement action by the Tribal, federal, state, or local government.
4. A person that negligently violates this Hemp Code or a USDA or state Hemp Plan 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.
5. A person that receives more than one negligent violation of this Hemp Code or a USDA or state Hemp Plan in a growing season may have their license revoked.
6. The HCO shall conduct at least one inspection to determine if the corrective action plan has been implemented. Any person who fails to cooperate in this follow up inspection or who knowingly or intentionally violates a corrective action plan shall have their license suspended.

### **Section 14.3 Culpable Violations**

(a) If the HCO determines that a person has violated this Hemp Code, terms of the license, or any Tribal or federal law or regulation governing the licensee's activities with a culpable mental state greater than negligence, the HCO shall immediately report them to:

1. The U.S. Attorney General; and
2. The chief law enforcement officer of the Tribe.

(b) Section 13.2 of this Hemp Code shall not apply to culpable violations.

### **Section 14.4 Felonies**

(a) A person with a State or Federal felony Conviction related to a controlled substance is subject to a 10-year ineligibility restriction on participating in this Plan from the date of the Conviction. An exception applies to a person who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose Conviction also occurred before that date.

(b) For licensees that are entities, Key Participants of all licensees shall be considered to be participating in Hemp production under this Hemp Code and subject to the felony conviction restriction for purposes of paragraph (a) of this Section 13.4.

### **Section 14.5 Termination of License**

A License is a privilege and not a right. The Tribe may unilaterally revoke a license upon the HCO's finding that a Licensed Producer and/or Processor has committed a violation of this Hemp Code, any Ordinance or Hemp related Regulations, or violated any provision of an applicable license requirement.

### **Section 14.6 Termination of Employment**

Tribal employees, including the HCO, may be terminated for violating provisions of this Hemp Code or any Hemp related Regulations.

#### **Section 14.7 Civil Penalties**

If the HCO receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Hemp Code, any Hemp related Regulations, or license requirements, then the HCO may assess a monetary civil penalty not to exceed \$2,500 per violation.

#### **Section 14.8 Forfeiture**

Any Hemp and non-compliant hemp plants testing higher than the Acceptable Hemp THC level within the Tribe's Territory are subject to forfeiture and destruction, without compensation. The person shall be responsible for all costs of the forfeiture and destruction of the crop.

#### **Section 14.9 Advise ment of Rights.**

Any time the HCO issues a penalty under this Hemp Code, the licensee shall be provided with a written notice of their rights, including the right to a hearing.

### **CHAPTER 15: APPEALS**

#### **Section 15.1 Burden of Proof**

Prior to the HCO issuing a penalty or an adverse decision, the HCO must make a finding that is supported by a preponderance of the evidence. In the case of the cultivation or possession of non-compliant hemp, which does not fall within the definition of hemp, the laboratory test showing that violation shall constitute a preponderance of evidence.

#### **Section 15.2 Appeals to the Community Council**

Any person who has been issued an adverse decision under this Hemp Code or the Tribal Hemp Regulations may seek the Community Council's review of such decision. Any Community Council Member who is the licensee or was involved with the action that is subject to the adverse decision shall recuse themselves from review of such decision.

#### **Section 15.3 Requesting a Review Hearing**

A hearing will not be conducted unless a written petition for review is provided to the Community Council President within thirty (30) calendar days of service of the written notice of the HCO's adverse decision. The petition must state the basis that supports the person's position. If no request is provided within the time allotted, the HCO's decision shall be deemed final.

#### **Section 15.4 Review Hearing**

At the review hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, the Community Council may overturn the decision of the HCO, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Community and its Community members, or the Community Council may affirm the decision of the HCO. The decision of the Community Council shall be provided in writing. It shall be final and is not subject to judicial review. Hearings shall be open to the public.

### **Section 15.5 Legal Standard**

The legal standard for review shall be clear and convincing.