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## HEMP PRODUCTION ORDINANCE

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## **CHAPTER 1           GENERAL PROVISIONS**

### **SECTION 1.01.       PURPOSE**

This Ordinance shall govern the cultivation of hemp on Seneca Nation Territories. Nation regulation of hemp production is necessary to protect the health, security, and general welfare of the Nation.

### **SECTION 1.02.       CONSTITUTIONAL AND OTHER AUTHORITY**

This Ordinance is consistent with and implements Section XIII of the Nation Constitution which provides as follows: “The Council shall have the power to make laws not inconsistent with this Constitution.” This Law is also consistent with and implements Article 23 of the United Nations Declaration on the Rights of Indigenous Peoples which provides as follows: “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

### **SECTION 1.03.       BACKGROUND AND INTENT**

The Seneca Nation, a federally-recognized sovereign Indian nation, exercises its inherent rights of sovereignty to promote the self-determination and economic sovereignty of the Nation by regulating hemp production on Nation Territory to the fullest extent permitted by Nation and federal law.

### **SECTION 1.04.       DEFINITIONS**

- A. “Acceptable hemp THC level” means when a laboratory tests a sample, 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 the requirements of State or Tribal hemp plans or the USDA hemp plan 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 percent or less THC. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35 percent and the measurement of uncertainty is  $\pm 0.06$  percent, the measured total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” affects neither the statutory definition of hemp, 7 U.S.C. 1639o (1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802 (16), in the CSA.
- B. “Agricultural Marketing Service or AMS” means the Agricultural Marketing Service of the U.S. Department of Agriculture.

- C. “Applicant” means a Person requesting licensure under this Ordinance.
- D. “Audit” means an official inspection of an individual’s or organization’s accounts and paperwork or documentation by an independent body.
- E. “CAC/GL” means Codex Alimentarius Commission Guideline.
- F. “Cannabidiol” or “CBD” is one of at least 113 active cannabinoids identified in *Cannabis Sativa L.* CBD can be produced by extracting the cannabinoid from hemp.
- G. “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis Sativa* is a species, and *Cannabis Indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- H. “Corrective action plan” means a plan by the HCA for correcting a negligent violation or non-compliance with the Ordinance, its terms, the applicable law(s), and/or orders issued by the HCA.
- I. “Council” means the Seneca Nation Council.
- J. “Criminal background check” means the Federal Bureau of Investigation’s Identity History Summary.
- K. “Culpable mental state greater than negligence” means to act intentionally, willfully, knowingly, recklessly, or with criminal negligence.
- L. “Decarboxylated” means the completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877 \* THCA)).
- M. “Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.
- N. “Delta-9 tetrahydrocannabinol” or “THC” means it is the primary psychoactive component of cannabis. For purposes of this Ordinance, delta-9 THC and THC are interchangeable.
- O. “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 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.
- P. “Drug Enforcement Agency or DEA” means the United States Drug Enforcement Administration.

- Q. “Dry weight basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.
- R. “Entity” means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.
- S. “Farm Service Agency or FSA” means an agency of the United States Department of Agriculture.
- T. “Gas chromatography or GC” means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- U. “GPS” means Global Positioning System.
- V. “Handle” means to harvest 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 cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- W. “Hemp” or “Industrial 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.
- X. “Hemp Compliance Administrator” (or “HCA”) means the Seneca Nation’s officer, or its designee, responsible for regulating and monitoring the production of Hemp within Seneca Nation Territories, as established by this Ordinance. The term may include employees, agents, and other designees of the HCA.
- Y. “Hemp Product” means a product of industrial hemp that meets one or more of the following descriptions:
1. (a) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9 THC content above 0.3 percent; and (b) Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above 0.3 percent);
  2. The product is CBD that was derived from hemp, in accordance with this Ordinance; or
  3. The product is CBD that is approved as a prescription medication by the United

States Food and Drug Administration.

- Z. “High-performance liquid chromatography” or “HPLC” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
- AA. “Information sharing system” means the database that allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.
- BB. “Key Participant” means a sole proprietor, a partner in a partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as the chief executive officer, chief operating officer and chief financial officer, and does not include non-executive managers such as farm or field workers or shift managers.
- CC. “Location ID” means the unique identifier initiated by the Applicant and established by the Hemp Compliance Administrator. The Location ID consists of a unique set of GPS coordinates for each Lot where Hemp will be grown, and each building where Hemp will be handled, stored, processed, or distributed.
- DD. “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. The term lot also means the terms “farm,” “tract,” “field,” and “subfield” as these are terms used by FSA in 7 CFR (Code of Federal Regulations) § 718.2 to define lot.
- EE. “Maximum residue limit(s)” or “MRLS or MRLs” means the maximum concentration of a residue that is legally tolerated.
- FF. “Measurement of Uncertainty” or “MU” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- GG. “Member” or “Nation member” means any person, regardless of age, who is an enrolled member of the Nation.
- HH. “Negligence” means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.
- II. “Non-Compliant Hemp” means hemp found to be outside the acceptable hemp THC level.
- JJ. “Ordinance” means the Seneca Nation Hemp Plan as amended as an Ordinance.
- KK. “Person” means an individual or business entity.

- LL. “Pesticide” means any substance or mixture of substances intended to:
- a. Prevent, destroy, control, repel, attract, or mitigate any pest; or
  - b. Be used as a plant regulator, defoliant, or desiccant; or
  - c. Be used as a nitrogen stabilizer.
- MM. “Plan” means the Seneca Nation Hemp Production Plan.
- NN. “Pre-harvest sample” means a representative sample taken from a particular Lot collected in accordance with the procedures established by this Ordinance.
- OO. “Produce” means to grow hemp plants for market, or for cultivation for market, on Seneca Nation Territory.
- PP. “Producer” means a Person authorized and licensed to grow, handle, store, and market hemp at one or more specified locations on the Territory of the Seneca Nation.
- QQ. “Post-decarboxylation” means in the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion:  $[\text{Total THC} = (0.877 \times \text{THCA}) + \text{THC}]$  which calculates the potential total THC in a given sample. See the definition for decarboxylation.
- RR. “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.
- SS. “Representative Sample” means a sample with an adequate number of units that are intended to ensure that the sample accurately portrays the material being sampled.
- TT. “Reverse distributor” means a person who is registered with the DEA in accordance with 21 CFR (Code of Federal Regulations) § 1317.15 to dispose of marijuana under the Controlled Substances Act.
- UU. “Sampling Agent” means a tribally-designated law enforcement agent with the required Seneca Nation and USDA training authorized to collect hemp samples.
- VV. “Secretary” means the Secretary of the United States Department of Agriculture.
- WW. “Seneca Nation” or “Nation” means the Seneca Nation, a federally recognized Indian Tribe, including its political subdivisions and instrumentalities.

XX. “Seneca Nation Territories” means (1) all lands within the limits of any Seneca reservation; (2) any lands which are held by the Nation or individual and subject to restriction against alienation by the United States; and (3) Seneca Settlement Act lands.

YY. “THCA or THCa” means delta-nine-tetrahydrocannabinolic acid.

ZZ. “Total THC” means the Total THC is the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion:  $[Total\ THC = (0.877 \times THCA) + THC]$  which calculates the potential total THC in a given sample.

AAA. “Volunteer cannabis plant” means any cannabis plant that renders itself without cultivation.

## **CHAPTER 2. HEMP COMPLIANCE ADMINISTRATOR**

### **SECTION 2.01 ESTABLISHMENT, DURATION, AND ATTRIBUTES**

A. The Seneca Nation hereby establishes the Hemp Compliance Administrator (HCA) as the regulatory body for the production of Hemp on Nation Territory, in accordance with this Ordinance.

B. The HCA is under the directive of the Seneca Nation Council, and may fulfill any and all obligations of the Council under this Ordinance.

C. In carrying out its purpose under this Ordinance, the HCA shall operate as an instrumentality of the Nation and shall function as an arm of the Nation.

1. The term limit shall be at the discretion of the Council.
2. The HCA shall be appointed by the Council and must be:
  1. A Member of the Seneca Nation.
  2. At least twenty-five (25) years of age.
  3. Free of felony convictions in any tribal, state, or federal jurisdictions.
  4. Free of financial interest or active participation in hemp production or



employment by a Producer under this Ordinance.

5. Removal. The Seneca Nation may remove the HCA for the following reasons: conviction of a felony, neglect of duty, malfeasance in office, misfeasance in office, misconduct in any way, any conduct that threatens the honesty or integrity of the Hemp Program or otherwise violates the letter or intent of this Law or other applicable Nation law, or for other good cause shown.
6. Vacancies. The Council shall appoint an HCA when the position becomes vacant.
7. Training, Equipment, and Staff. The Seneca Nation shall provide the HCA with adequate training, equipment, and compensation to fully carry out its duties.

## **SECTION 2.02. DUTIES AND RESPONSIBILITIES**

1. The HCA shall have the authority and responsibility to enforce the provisions of this Ordinance.
2. The HCA:
  1. May issue or deny licensure for the production of hemp on Seneca Nation Territories.
  2. Shall have access to and inspect, examine, photocopy, and audit all papers, books, and records, and property with regards to hemp operations conducted on Nation Territory.
  3. Shall ensure Producers' compliance with this Ordinance and all Nation laws or policies applicable to the cultivation of hemp; and Federal laws, rules and regulations regarding hemp. This includes investigating any suspicion of wrongdoing associated with any hemp activities and reporting any potential criminal violations to law enforcement.
  4. Shall assess and approve Location ID's on Seneca Nation Territories.
  5. Shall assess and evaluate the potential environmental impacts of a hemp business' proposed operations.
  6. Shall inspect, audit, examine, and monitor all hemp-related operations, including:
    - i. Performing, with the Sampling Agent, pre-harvest testing, or post-harvest testing (where applicable);
    - ii. Inspecting and copying relevant records;
    - iii. Conducting, with the Sampling Agent, annual inspections of, or at a minimum, a random group of Producers to verify that hemp is not produced in violation of this Ordinance, at an interval of once per growing season (calendar year).
  7. Shall supervise the disposal or remediation of all Non-Compliant Hemp. This may

come in the form of in-person verification by the HCA or its designee, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Disposal and remediation means are described at AMS's website.

8. Shall comply with all reporting and recordkeeping requirements, in accordance with Section 5.05.
9. Shall provide immediate notice to the USDA of adverse test results. May revoke or suspend a Hemp License for violations of Nation laws or policies applicable to the cultivation of Hemp or any violations of this Ordinance in accordance with the procedures in Section 5.04.
10. May assess civil fines against any Person(s) in violation of this Ordinance. Any civil fines collected shall be submitted to the Nation's Fiscal Department.
11. Shall adopt policies and procedures to support the implementation of this Ordinance.
12. Shall educate and inform Nation members and the surrounding local communities about the Nation's hemp program.

### **SECTION 2.03      LIMITATION OF POWERS**

The HCA shall not regulate the Nation or any entities except with respect to the activities of the Hemp Production Program.

### **SECTION 2.04.      COMPENSATION**

The HCA, including its employees, agents, and other designees shall be compensated in an amount determined by Nation Council.

### **SECTION 2.05.      SOVEREIGN IMMUNITY**

- A. The HCA shall enjoy all of the privileges and immunities of the Nation, except as specifically limited by this Law, including sovereign immunity from suit in state, federal, or tribal court.
- B. The HCA shall have no authority to waive the sovereign immunity of the Nation, the Designee, or any other Nation entity.
- C. Notwithstanding any other provision herein, the HCA's immunity from suit shall at all times be deemed waived for actions against the office initiated by the Nation Council.

### **SECTION 2.06.      INDEMNIFICATION**

The Nation shall indemnify the HCA against expenses reasonably incurred in the pursuit of their

duties and activities performed on behalf of the Ordinance, directly or indirectly, including but not limited to lawsuits, costs and attorney fees, in defense of any action suit or proceeding, civil or criminal, in which such designee is made a party by reason of being or having been the HCA. However, no such person shall have the right of reimbursement or indemnity in relation to matters which they shall be adjudged in such action, suit or proceeding to be liable for dereliction of duty or for misconduct in the performance of such duty. The right of indemnity shall also apply to claims or suits which are settled, where the court having jurisdiction over such matter approves the settlement, or where the HCA approves the claim. The right of indemnity shall be in addition to all other rights to which an HCA may be entitled.

### **SECTION 2.07. ETHICAL MATTERS**

The HCA shall be considered a “public official” for purposes of the Nation’s Ethics Law.

### **SECTION 2.08. ANNUAL REPORTS**

The HCA shall provide an annual report to the Nation Council summarizing the HCA’s official actions to keep the Nation Council fully informed as to the status of Hemp Production on Nation Territory.

## **CHAPTER 3. HEMP PRODUCER LICENSING**

Subject to the provisions under this Ordinance, a Producer may plant, grow, cultivate, harvest, sample, test, process, transport, market, and transfer hemp to the greatest extent allowed under Nation and federal law.

### **SECTION 3.01. LICENSING FOR HEMP PRODUCERS**

- A. Only a Person licensed with the HCA under this Section may grow, handle, store, and market hemp. A Person licensed under this Section will be classified a Producer.
  - 1. Any Person found to be growing, handling, storing, and marketing hemp without a license is subject to enforcement provisions under this Ordinance.
- B. Each Applicant shall provide a complete criminal background check with their application.
- C. Applicants for licensing under this Section must submit to the HCA, in a form and manner determined by the HCA, the following information:
  - 1. For an individual Producer:
    - i. The Applicant’s (non-business entity) full name;
    - ii. The Applicant’s telephone number, email address (if available), residential address, mailing address, or another form of contact information; and
    - iii. The Applicant’s license number (for renewals).
  - 2. For a business entity Producer:

- i. Full name of business entity;
    - ii. Address of the principal business location;
    - iii. Full name, title, and email (if available) of each employee required to submit a criminal background check;
    - iv. Employer Identification Number (EIN); and
    - v. The Applicant's license number (for renewals).
  - 3. The Location ID for each Lot where Hemp will be grown;
  - 4. GPS map and legal land description for each Location ID;
  - 5. Payment in the amount and form determined by the HCA for licensure; and
  - 6. Any other information the HCA determines necessary pursuant to this subsection.
- D. New Producer applications shall be accepted on a rolling basis.
- E. Licensure under this subsection is a personal privilege and is not transferable to any other person, business, or entity.
- F. A Producer licensed under this subsection must keep records for a minimum of three (3) years, and as otherwise required by the HCA.
- G. The Nation shall assign each Producer a license identifier in a format prescribed by the USDA.
- H. Producer licenses must be renewed prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria as provided in this Ordinance for initial applications unless there has been an amendment to the regulations in this Ordinance since approval of the initial or last application.
- I. Seneca Nation hemp producer licenses shall be valid until December 31 of the year three years after the year in which license was issued.
- J. Current and valid licenses may be renewed by submitting a renewal application to the HCA no later than thirty (30) days prior to the date of the License expiration.

**SECTION 3.02. APPLICANT/PRODUCER COVENANTS**

By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:

- A. Any information provided to the Hemp Compliance Administrator, or designee, may be provided to the United States Department of Agriculture (USDA) and law enforcement agencies without further notice to Applicant or Producer;

- B. Applicants must have the legal right to produce hemp for each Location ID provided in the application, and the legal authority to grant the HCA access for inspection, auditing, sampling, and testing.
- C. The Applicant or Producer shall allow and fully cooperate with any inspection and sampling that the HCA deems necessary, including granting unrestricted access to the HCA on the licensed premises;
- D. The Applicant or Producer shall submit all required reports by the applicable due-date specified by the Hemp Compliance Administrator;
- E. Applicants shall obtain and submit their Federal Bureau of Investigation (FBI) criminal identity history summary or other acceptable background check as determined by the Seneca Nation and USDA to the Hemp Compliance Administrator;
- F. The Applicant or Producer must report any controlled substance felony convictions under federal law to the Nation within five (5) Seneca Nation business days of receiving notice of such conviction; and
- G. The Applicant or Producer shall report any material changes to the HCA concerning application contents, business operations, Key Participants, Location ID, and any other information that may alter the way their Hemp Production License is regulated within five (5) Seneca Nation business days of the material change.

### **SECTION 3.03. INSPECTIONS**

- A. The HCA, with the tribally designated law enforcement agent, shall have the authority to conduct at least one (1) random inspection of a licensed premise at any point during the crop's growth phase and to take a representative sample of each Lot to verify compliance with all requirements of the license issued.
- B. The inspection sites shall be selected at random among all Producers at intermittent points throughout the calendar year, selection method and sampling times are to be determined by the HCA.
- C. Inspection visits may be conducted at any time by the HCA during regular business hours or within a twenty-four (24) hour notice outside of business hours. The HCA and its designee, including the Sampling Agent, shall be granted unrestricted access to the licensed premises and unrestricted access to all plants, parts, and seeds within the Location ID, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of hemp, and all documents and records pertaining to the Producer's Hemp business.

1. The Seneca Nation must maintain information, available to Producers, about

trained sampling agents.

- D. All samples collected by the HCA shall become the property of the Nation and no compensation shall be owed by the Nation for such samples.
- E. The Nation shall keep test results for all hemp tested for a minimum of three (3) years.
- F. If a crop is determined to contain a tetrahydrocannabinol (THC) concentration exceeding the acceptable hemp THC level, the Hemp Compliance Administrator, with the required aid of the tribally designated law enforcement agent, may seize, detain, or dispose of the crop pursuant to Section 5.03.
- G. If it is found that during inspection, voluntary cannabis is growing outside of an authorized outdoor growing plot, proper disposal methods will be followed pursuant to Section 5.03.

#### **SECTION 3.04. FEES**

The HCA shall charge an application fee for each license under this Ordinance. The HCA may set and collect additional fees, including license renewal and testing fees, in amounts that are reasonable and necessary to cover the costs of administering and enforcing the Ordinance. All revenue shall be utilized to defray the costs of administering this Ordinance.

#### **SECTION 3.05. TRANSPORTATION REQUIREMENTS**

The Producer, or a designated representative of the Producer, responsible for the transportation of hemp or hemp products must ensure that the following documentation accompanies the hemp at all times during transport:

- A. A copy of the license that corresponds to the licensed premise from which the hemp originated;
- B. A copy of the pre-harvest test results or post-harvest test results that correspond to the hemp in transit as identified by the Location ID that accompanies the hemp;
- C. A copy of a transport manifest that includes all information required to be documented by the Nation; and
- D. Any other documentation that may be required by the HCA.

#### **SECTION 3.06. REVOCATION OR SUSPENSION OF HEMP LICENSE**

The HCA may decline to grant a new license, may decline to renew an existing license, and may revoke or suspend a license already granted at any time for any Producer if such Person violates:

- A. Any provision of this Ordinance;

- B. A rule promulgated by the HCA in furtherance of this subsection; or
- C. Any Nation law or policy applicable to the cultivation of hemp.

## **CHAPTER 4. APPEALS**

### **SECTION 4.01. ESTABLISHMENT OF A HEMP LICENSE APPEALS COMMITTEE**

1. The Seneca Nation establishes the Seneca Nation Hemp Appeals Committee to resolve claims against the HCA or its designee in the denial, suspension, or revocation of licensure under the Seneca Nation Hemp Production Ordinance.
2. The Committee shall be comprised of three (3) members, and an additional two (2) alternate members authorized to fill temporary vacancies, conflicts of interest, or other unforeseen circumstances that may inhibit the participation of members.
3. Members shall be appointed by Council as follows: one (1) shall reside on the Allegany Territory and serve a four (4) year term, one (1) shall reside on the Cattaraugus Territory and serve a four (4) year term, and one (1) shall be an ex-officio Councilor and serve an initial two (2) year term and subsequent four (4) year terms. Three (3) members shall be required to conduct business.
4. Committee members shall not have any controlled substance related felonies within ten (10) years of appointment. Committee members shall have experience in the following fields: law, policy, business, or other commensurate related experience.
5. A committee member shall recuse himself or herself from reviewing any appeal as required to prevent any actual conflict of interest or so as to avoid the appearance of impropriety.
6. In the event that a Committee member is temporarily unable to serve, an alternate Committee member shall be appointed and seated, by order of his or her appearance on the list of alternates, as authorized by the Seneca Nation Council and until such time as the regular Committee member is able to resume his or her duties.
7. The Committee members shall be paid for his or her services in an amount determined by Council.
8. Any decision by the Committee under this Ordinance is not subject to review, enforcement or modification in any state or federal court or by any authority outside the Nation.

### **SECTION 4.02. APPEAL FROM DENIAL OF APPLICATION**

Any Applicant that is denied licensure by the HCA or its designee may appeal to the Committee.

Requests for an appeal shall be made in writing postmarked within fifteen (15) Seneca Nation business days of the date of the HCA's or designee's adverse decision. The Committee will schedule a hearing within thirty (30) Seneca Nation business days of receiving the request. Persons requesting an appeal may indicate within their request whether thirty (30) Seneca Nation business days would create an unreasonable hardship.

#### **SECTION 4.03. APPEAL FROM LICENSE SUSPENSION OR REVOCATION**

Any Person whose License has been suspended or revoked by the HCA or its designee may appeal to the Committee. Requests for an appeal shall be made in writing postmarked within fifteen (15) Seneca Nation business days of the date of the HCA's or designee's suspension or revocation decision. The Committee will schedule a hearing within thirty (30) Seneca Nation business days of receiving the request. Persons requesting an appeal may indicate within their request whether thirty (30) Seneca Nation business days would create an unreasonable hardship.

#### **SECTION 4.04. COMMITTEE HEARING**

1. Hearings shall be conducted in accordance with the Bylaws established by the Committee.
2. The Committee shall not be required to accept or consider information or documentation that was not compliant with application deadlines established.
3. Hearings shall occur at a time, date and location designated by the Committee.
4. Appellant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.
5. The decision shall be made by majority vote of Committee members.
6. The decision of the Committee shall be final.

### **CHAPTER 5. PROGRAM REQUIREMENTS TO REGULATE AND MONITOR THE PRODUCTION OF HEMP**

The Seneca Nation assumes primary regulatory authority over the production of hemp to the fullest extent permitted by law and in accordance with this Ordinance. The Nation intends to implement a strong and effective regulatory and enforcement system that will preserve the public safety and health of its members.

#### **SECTION 5.01. MAINTENANCE OF RECORDS**

- A. The HCA shall collect, and retain for a period of at least three (3) calendar years:



1. Location ID information for every Lot, site or location where the HCA has approved hemp to be grown.
2. All documents and records pertaining to the Producer's business.
3. All documents and records pertaining to the HCA's and Producer's sampling, testing, inspections, audits, disposals, and remediations.

## **SECTION 5.02. PRE-HARVEST TESTING REQUIREMENTS**

1. All Hemp produced within Seneca Nation Territory must be produced in accordance with this Ordinance.
2. The HCA shall collect official samples from every Producer and every Lot until program data is available to develop performance-based sampling protocols.
3. For the purposes of these procedures, a "lot" is a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" refers to the batch of contiguous, homogeneous whole of a product being sold to a single buyer at a single time.
4. The Producer shall not harvest Hemp before sampling by the HCA or its designee, including the Sampling Agent.
5. The HCA or its designee, with the Sampling Agent, must have complete and unrestricted access during business hours to all hemp, all land, buildings, etc. used for cultivation, handling, and/or storage of Hemp.
6. The Producer must contact the HCA and arrange for and ensure the sampling of each Location ID no more than thirty (30) days prior to anticipated harvest for the purpose of ensuring that the Location ID's total THC is within the acceptable hemp THC level on a dry weight basis. Producers may not collect samples from their own growing facilities.
7. The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of ninety-five percent (95%) that no more than one percent of the plants in each Lot will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.
8. During a scheduled sample collection, the producer or an authorized representative of the Producer shall be present at the growing site.

### **A. Procedures for Sampling**

1. One Location ID is to be sampled at a time to ensure the hemp sampled and equipment used are not commingled across Lots; then proper sanitization of equipment applied before the next sampling process.
2. The following equipment and supplies may be used:

- i. Garden pruners/shears (Cleaned prior to and following each composite sample. Some examples of appropriate cleaning agents and supplies to use on garden pruners/shears are bleach, rubbing alcohol, steel wool, and/or sandpaper.)  
Sample bags, paper;
      - a. The size of the bags will depend upon the number of clippings collected per Lot.
      - b. The bags should be made from material known to be free from THC.
    - ii. Security tape;
    - iii. Permanent markers;
    - iv. Sample collection forms;
    - v. GPS unit of Lot being sampled;
    - vi. Disposable gloves – Nitrile; and
    - vii. Ladder.
3. The HCA, with the assistance of the Sampling Agent, must collect the minimum number of plant specimens necessary to represent a homogenous composition of the Lot.
4. Surveillance of the growing area.
  - i. The Sampling Agent shall verify the GPS coordinates of the growing area as compared with the GPS coordinates submitted by the Producer to the Seneca Nation Hemp Production Program.
  - ii. The Sampling Agent shall estimate the average height, appearance, approximate density, condition of plants, and degree of maturity of the inflorescences (flowers/buds).
  - iii. The Sampling Agent shall visually establish the homogeneity of the stand to establish that the growing area is of like variety.
5. Time of Sampling
  - i. Within 30 days prior to the anticipated harvest of a designated hemp lot, an approved sampling agent, State or Tribally designated person or Federal, State, local, or Tribal law enforcement agency shall collect representative samples from such cannabis plants for THC concentration level testing.
6. Field Sampling.
  - i. For purposes of determining the number of individual plants to select for sampling, the size of the grow area must be considered;
  - ii. For Lots of less than one (1) acre, including greenhouses, select a minimum of one (1) plant, then take a cutting from the plant to form a sample. For Lots of one (1) to ten (10) acres, including greenhouses, select a minimum of one plant per acre, then take cuttings of each plant, then combine to form a composite sample.
  - iii. For growing areas larger than ten (10) acres, including greenhouses, the number of plants that will be selected to form a composite sample is based upon the Codex Alimentarius Recommended Methods of Sampling for the

Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. See table (A) below.

A. Adjusted primary plant sample sizes for fields from 11 to 173 acres:

Number of acres	Sample Size	Number of acres	Sample Size	Number of acres	Sample Size	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

7. Collecting Samples from each Lot:

- i. Sampling Agents shall 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 shall take all reasonable steps to ensure that a sample is collected that represents a homogenous composition of the lot by avoiding edges and thoroughfares.
- ii. While walking through the growing area, the Sampling Agent shall cut at least the outlined number of 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.
- iii. The cut shall be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five (5) to eight (8) 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.
- iv. Utilize a paper sample bag for collecting sample cuttings. Ensure that each bag has the minimum number of cuttings needed per acre. If one (1) 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.)

- v. Seal each bag and record the sample number or other documentation required by the HCA.

8. Sample identification:

- i. The Sampling Agent shall seal each bag and record the sample identification number. The sample identification shall include, at a minimum:
  - A. Sampling Agent contact information;
  - B. Location ID;
  - C. Name and contact information of the Producer;
  - D. Hemp Producer license number;
  - E. Date of sample;
  - F. Lot, subfield, or other identifier as provided by the USDA Farm Service Agency; and
  - G. Any other information that may be required by the HCA, mail delivery services, or others as applicable and approved by the HCA.

B. Testing Methodology.

1. The Producer shall identify a laboratory that adheres to the standards of performance as outlined in the Final Rule or DEA-registered laboratory capable of testing, using post-decarboxylation or high-performance liquid chromatography (HPLC), for delta-9 tetrahydrocannabinol concentration levels to determine the total THC concentration level on a dry-weight basis. The testing methodology must consider the potential conversion of THCA in hemp into THC. The test result must report the total available THC derived from the sum of the THC and THCA content. Testing by non-DEA-registered laboratories may, at the discretion of the HCA, be considered sufficient until January 1, 2022.
2. Testing costs and fees shall be the responsibility of the Producer.
3. Any test of a representative sample exceeding the acceptable hemp THC level is conclusive evidence that the Lot is not in compliance, hemp may not be further handled, processed, or enter commerce, and Producer shall ensure the Lot is properly disposed or remediated with commensurate re-testing.
  - i. If a Producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur.
4. Analytical testing laboratories for purposes of detecting the concentration levels of THC shall meet the following standards:
  - i. Laboratory quality assurance must ensure the validity and reliability of test results;
  - ii. 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;
- iii. The demonstration of testing validity must ensure consistent, accurate analytical performance;
  - iv. Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and
  - v. An effective disposal procedure for non-compliant hemp that does not meet the requirements of this part.
  - vi. Effective disposal procedures for non-compliant samples that do not meet the requirements of this part.
  - vii. 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.
  - viii. Hemp testing laboratory must be International Organization for Standardization (ISO) 17025 accredited.
  - ix. Sample preparation of pre- or post-harvest sample shall require grinding of the sample to ensure homogeneity of plant material prior to testing.
  - x. At a minimum, analytical testing of samples for total delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Secretary in writing. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC), and the test result must reflect the total available THC derived from the sum of the THC and THCA content. Current testing methodologies meeting these requirements include gas chromatography and liquid chromatography. Other methods may be approved if they meet the regulatory requirements.
  - xi. The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis.
    - A. Laboratories should create an internal SOP specific to testing and retesting hemp and should have the SOP available upon request for inspection.
    - B. After December 31, 2022, laboratories approved for THC testing must also be registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13.
    - C. The HCA shall require testing laboratories to comply with USDA reporting requirements in subpart F of 7 CFR Part 990. Laboratories shall only submit test results used to determine compliance with this part. Test result from informal testing conducted throughout the growing season shall not be reported to the USDA.

## 5. Retest Procedures

- i. Any hemp program licensee may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error.
- ii. If this occurs, the laboratory shall follow the same procedures as to

- conduct the initial test.
  - iii. The licensee requesting the retest of the second sample will pay the cost of the test.
  - iv. The retest results shall be issued to the licensee requesting the retest, and a copy shall be provided to the HCA or its designee.
6. Testing Remediated Hemp Samples
- i. Licensees can “remediate” hemp following an initial failed test by shredding plant material in a product called “biomass.” In this instance, laboratories will receive samples of remediated biomass material for retesting.
  - ii. For remediated testing, the laboratory shall follow the same procedures used to conduct an initial test, as described in this part.
  - iii. For remediated testing, the laboratory shall follow the same reporting requirements as described in this document. A licensee must maintain a legible copy of the remediated test results, available for inspection, for a period of three years from receipt of the testing results provided by the laboratory. Therefore, laboratories are encouraged to provide such documentation to licensees.
7. For each sample tested pursuant to this Section, the Producer shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:
- i. General information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the independent testing laboratory;
  - ii. The date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;
  - iii. A statement indicating whether the sample contained a THC concentration that does not exceed the acceptable hemp THC level on a dry weight basis; and
  - iv. The test result must report the total available THC derived from the sum of the THC and THCA content.
8. Nothing in this Section shall prevent a Producer from voluntarily collecting samples and testing Hemp for quality assurance purposes.
9. If the Producer fails to complete harvest within thirty (30) days of sample collection, a secondary pre-harvested sample of the Lot shall be required to be submitted for re-testing.
10. Samples from Lots that meet the acceptable hemp THC level may enter the stream of commerce.
11. Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the Lot represented by the sample is not in compliance with this part and shall be disposed of or remediated in accordance with section 5.03.

12. Cannabis found to be outside the acceptable hemp THC level after re-testing a remediated sample must be immediately reported to the USDA and sequestered for proper disposal.

### **SECTION 5.03 PERFORMANCE-BASED SAMPLING**

- A. The HCA may use performance-based sampling that allows for reduced or no regulatory sampling of specific certified seed, varieties yielding consistently complaint hemp, Lots used for academic research by a college or university, historical performance of the Producer, or other elements, which have the potential to ensure at a confidence level of 95% that no more than 1% of the plants in each Lot would be noncompliant.
  - a. The HCA shall evaluate data from other tribal nations, states, and Canada; and historical data as it is acquired through the implementation of Seneca Nation's hemp plan for developing policies and guidelines surrounding performance-based sampling.
- B. Performance-based sampling does not prevent the HCA from conducting random inspections or sampling and testing of Lots at any time. The HCA reserves the right to conduct sampling at any time to ensure compliance with the acceptable THC level.
- C. In the event that the HCA is to implement performance-based sampling, the HCA shall update this plan accordingly and submit it to the USDA for approval prior to implementation.

### **SECTION 5.04. DISPOSAL AND REMEDIATION OF NON-COMPLIANT HEMP AND HEMP PRODUCTS**

- A. Cannabis plants ultimately exceeding the acceptable hemp THC level must be disposed of in accordance with the Controlled Substances Act (CSA) and U.S. Drug Enforcement Administration (DEA) regulations using a reverse distributor, or on site at the farm or hemp production facility under the direction of the HCA. On site disposal methods that a Producer must use to render the non-compliant hemp as non-retrievable and non-ingestible, approved methods include: plowing under, mulching / composting, disking, bush mowing, deep burial, and burning.
- B. Remediation refers to any process by which non-compliant hemp (THC concentration > 0.3%) is rendered compliant (THC concentration  $\leq$  0.3%). Remediation can be achieved by separating and destroying non-compliant flowers while retaining stalks, leaves, and seeds; or by shredding the entire hemp plant to create a homogenous "biomass," both methods must be retested for THC compliance
- C. The Nation shall promptly notify the USDA of any occurrence of plants not meeting the Hemp definition and attach records showing disposal of all plants in the Lot.

- D. The Nation Hemp Disposal or Remediation Report and each corresponding disposition certificate must be submitted to the USDA on the 1<sup>st</sup> day of each month. If this date falls on a holiday or weekend, the report is due the next business day.
- E. Producers must verify disposal or remediation by submitting required documentation in accordance with 7 CFR §990.27. All records regarding disposal and remediation of all cannabis plants that do not meet the definition of hemp shall be made available for inspection by the HCA or its designee during reasonable business hours in accordance with this Ordinance.
- F. The Producer must notify and receive prior approval from the HCA before any disposal or remediation of a non-compliant crop is to take place.
- G. The Producer shall be responsible for the cost of crop disposal or remediation.
- H. The Producer shall ensure that non-compliant hemp is properly disposed or remediated. This may come in the form of in-person verification by the HCA or its designee, or alternative pre-approved requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully.
- I. Non-compliant hemp plants may be remediated by separating and destroying non-compliant flowers, while retaining stalks, leaves, and seeds.
  - a. Non-compliant hemp plants may be remediated by 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 should be kept separate and not be combined during this process. This biomass shall be resampled and retested to ensure the biomass material tests within an acceptable THC concentration level before it may enter the stream of commerce in accordance with this Ordinance.
- J. Equipment and Supplies:
  - a. Remediation:
    - i. Gloves
    - ii. Shears, clippers, scissors, shredding equipment (to remove non-compliant flowers from stalks)
    - iii. Striping, shredding, or mulching equipment
    - iv. Large plastic bags or other containers to store shredded biomass
    - v. The bags and containers should be made from material known to be free from THC
    - vi. Marking and labeling equipment (to mark and label hemp lots for remediation from other lots)
  - b. Disposal:
    - i. Plow or tractor (for plowing, mulching, composting, disking, bush mowing, deep burial)
    - ii. Composter (for composting)



- iii. A burn area and fire equipment (for burning non-compliant lots)
  - c. Resampling:
    - i. Disposable gloves – Nitrile
    - ii. Scoop with long handle (cleaned prior to and following each sample)
    - iii. Bag to store resample
    - iv. Permanent markers
    - v. The bags should be made from material known to be free from THC
    - vi. A 750 mL or similar measuring instrument (cleaned prior to and following each sample)
- K. Remediated biomass should be separated from any compliant hemp stored in the area and clearly labeled and demarcated as “hemp for remediation purposes.” All lots subject to remediation should be stored, labeled and demarcated apart from each other and from other compliant hemp lots stored or held nearby.
- L. Remediated biomass should not leave the labeled and demarcated area until a test result showing compliance with the acceptable hemp THC level is received or until the biomass will be destroyed.
- M. A representative sample of the biomass should be taken for compliance purposes. When taking the resample, the sampling agent should take biomass material from various depths, locations, and containers in the labeled and demarcated area to collect a representative sample of the material. At minimum, ~750 mL or three (3) standard measuring cups of biomass material should be collected. Sampling agents may collect more biomass material based on the requirements of the testing laboratory. If ~750 mL of material is not available, the sampling agent should collect enough biomass material for a representative sample.
- N. An original copy of the resample test results, or a legible copy, should be retained by the producer or an authorized representative and available for inspection for a period of three (3) years from the date of receipt.

**SECTION 5.05. ENFORCEMENT, NEGLIGENT VIOLATIONS, CULPABLE VIOLATIONS, AND CORRECTIVE ACTION PLANS**

- A. Producers shall not receive more than one (1) negligent violation per growing season. Negligent violations shall include the following:
  - 1. Failure to provide a legal description of land on which the Producer produces hemp;
  - 2. Failure to obtain a license from the Seneca Nation’s HCA or its Designee, or other necessary authorization, as applicable; or
  - 3. 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 section if they make reasonable efforts to grow hemp and the cannabis does not have a total delta-9 tetrahydrocannabinol

concentration of more than 1.0 percent on a dry weight basis.

- B. A Producer who is found by the HCA to have committed a negligent violation, shall be subject to a corrective action plan. Corrective action plans may be a plan proposed by a licensed hemp Producer and approved by the HCA for correcting a negligent violation(s) or non-compliance(s) with the applicable provisions of this Ordinance, or other applicable law(s). Also, a plan proposed by the HCA for correcting violations or non-compliances with the Ordinance, or other applicable law(s). At minimum, the following information shall be included in the plan:
  - 1. A reasonable date by which the Person shall correct his or her violation; and
  - 2. A requirement for periodic reports from the Person to the HCA or its Designee about the Person's compliance with the corrective action plan and regulations for a period of at least two (2) years from the date of the negligent violation.
- C. The HCA shall conduct inspections to determine if the Corrective Action Plan is followed.
- D. A Producer that negligently violates this Ordinance shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Seneca Nation, or local government.
- E. A Producer who is found by the HCA to have negligently violated provisions of this Ordinance governing that Person's participation in the Hemp Program three (3) times in a five (5) year period shall be ineligible to hold a license for a period of five (5) years beginning on the date of the third violation.
- F. A Producer of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level, does not commit a negligent violation under subsection 5.04 (A) if the Producer make reasonable efforts to grow hemp and the cannabis does not have a total delta- 9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.
- G. A Person who is found by the HCA to have violated provisions of this Ordinance governing that Person's participation in the hemp program with a culpable mental state greater than negligence shall be immediately reported to the following law enforcement agencies:
  - 1. The Chief Marshal of applicable territory of the Seneca Nation;
  - 2. The Attorney General of the United States; and
  - 3. Paragraphs (B) and (D) of this section shall not apply to culpable violations.
- H. Any Person or Key Participant convicted of a felony relating to a controlled substance under State or Federal law shall be ineligible, during the 10-year period following the date of conviction, to produce hemp under this Ordinance.
  - 1. Civil fines may be assessed per discretion of the HCA when convictions occur while licensed under this Ordinance.
  - 2. Any Producer growing hemp lawfully with a license, registration, or authorization

under a pilot program authorized by 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date shall be exempted from paragraph (H) of this section.

3. For Producers that are entities, the HCA shall determine which employee(s) of a producer shall be considered to be participating in the Ordinance and subject to the felony conviction restriction for purposes of paragraph (F) of this section.
- I. Any Person who materially falsifies any information contained in an application to participate in the Hemp Program established by the Seneca Nation shall be ineligible to produce hemp under this Ordinance. Civil fines may be assessed per discretion of the HCA.
- J. Civil fines may be assessed at the discretion of the HCA in addition to the corrective measures referenced in this section.

## **SECTION 5.06. REPORTING TO THE SECRETARY**

- A. Producer Reports. Not more than thirty (30) days after receiving and compiling the hemp Producer's information, on the first of the month, the Hemp Compliance Administrator shall provide to the United States Secretary of Agriculture or the Secretary's designee, the Nation Hemp Producer Report. If the first of the month falls on a holiday or weekend, the reports are due the next business day. The report shall be submitted using a digital format compatible with the USDA's information sharing systems, whenever possible. Producer Reports shall include the following information:
  1. Producer information
    - i. For each new *individual* Producer, report shall contain the license identifier, full name of Producer(s), business address, telephone number, and email (if available).
    - ii. For each new *entity* Producer, report shall contain the license identifier, entity name, Employer Identification Number (EIN), full name of Key Participant(s), principal business location address, and the full name, title, telephone, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.
    - iii. For each existing Producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.
  2. Status of Producer license
  3. Period covered by the report
  4. Certification of no changes during the current reporting cycle, if applicable.
- B. Disposal or Remediation Reports. If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of or remediated. The HCA shall submit the Nation Hemp Disposal or Remediation Report on the first day of each month. If

the date falls on a holiday or weekend, the report is due the next business day. Disposal and Remediation Reports shall include the following information:

1. Name and address for each Hemp Producer
2. Producer license identifier
3. Location information such as FSA Lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.
4. Name and Organization of Disposition Agent
5. Date disposal or remediation was completed
6. Total acreage

C. Annual Reports. The HCA shall submit the Nation Hemp Annual Report (AMS-25) by December 15<sup>th</sup> of each year. Annual Reports shall include the following information:

1. Total planted acreage.
2. Total harvested acreage.
3. Total acreage disposed and remediated.

D. Test Results Reports. Each Producer must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain:

1. Producer's license or authorization identifier;
2. Name of Producer;
3. Business address of Producer;
4. Lot identification number for the sample;
5. Name of laboratory and, no later than December 31, 2022, the DEA registration number of laboratory for testing;
6. Date of test and report;
7. Identification of a pre-harvest or post-harvest retest; and
8. Test result.

**SECTION 5.07. ESTABLISHING RECORDS WITH THE USDA FARM SERVICE AGENCY**

- A. All producers licensed to produce under the Nation Hemp Ordinance shall report hemp crop acreage with the Farm Service Agency (FSA) and shall provide, at minimum, the following information:
1. 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.
  2. Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
  3. License or authorization identifier in a format prescribed by USDA.
  4. Report changes to information provided on form (FSA-578) as commensurate with respective FSA program deadline.

**SECTION 5.08. INTERSTATE COMMERCE**

The Nation reserves the right to engage in interstate commerce, to the fullest extent permitted by law. Nothing in this Ordinance prohibits the interstate commerce of Hemp or Hemp Products produced in accordance with this Ordinance.

**CHAPTER 6. SUBMISSION OF HEMP ORDINANCE AS AMENDED AND MISCELLANEOUS PROVISIONS**

**SECTION 6.01. SUBMISSION TO THE SECRETARY OF AGRICULTURE**

Upon approval by the Nation Council, the Seneca Nation Hemp Ordinance as amended, shall be submitted to the United States Secretary of Agriculture for approval.

**SECTION 6.02. CERTIFICATION TO THE SECRETARY OF AGRICULTURE**

The President’s Office shall attach for submission to the Secretary of Agriculture certification that the Nation has the resources and personnel to carry out the practices and procedures described herein.

**SECTION 6.03. PROMULGATION OF ADDITIONAL RULES**

The HCA may promulgate rules pursuant to the provisions of this Ordinance to appropriately carry out the provisions herein.

**SECTION 6.04. AMENDMENTS**

If the Plan is substantively revised in a way that alters the way that this law meets the requirements of the Final Rule: Establishment of a Domestic Hemp Production Program; the Seneca Nation shall submit the amended Plan for USDA approval within sixty (60) days from the date the Seneca Nation's laws and regulations are effective. Producers shall continue to comply with the requirements of the existing plan while such modifications are under consideration by USDA. If the Seneca Nation's Ordinance or regulations in effect under the USDA-approved plan change but the Seneca Nation does not submit a revised plan within sixty (60) days from the effective date of the new law or regulation, the existing plan is revoked.

**SECTION 6.05. GOVERNMENT-TO-GOVERNMENT RELATIONSHIP;  
EXECUTIVE ORDER 13175**

Coordination with the United States Department of Agriculture and other federal agencies on matters regarding the regulation of the growth and production of hemp on Nation Territory shall be grounded on a government-to-government relationship that recognizes the unique relationship between the federal government and the Nation government. Essential to the government-to-government relationship is mutual respect and deference to governance decisions of the Nation. Future consultations on regulatory matters should reflect these concerns and the fact that the Nation, through its own policy-setting process, is best situated to determine the needs of the Nation, its members, and its future. All references to Executive Order 13175 shall include any future amendments thereto.

**SECTION 6.06. GOVERNING LAW**

All rights and liabilities associated with enactment of this Ordinance, or the licensures made hereunder, shall be construed according to the laws of the Seneca Nation.

**SECTION 6.07. SEVERABILITY**

If any provision of this Ordinance, or its application to any person or circumstance is held invalid, the remainder of the Ordinance, or the application of this provision to other persons or circumstances is not affected.

**SECTION 6.08. NO WAIVER OF NATION SOVEREIGNTY**

All rights and liabilities associated with the enactment of this Ordinance shall be construed and enforced according to the laws of the Nation. The Nation Council is vested with the authority and discretion to construe the terms of this Ordinance. Nothing in this Ordinance or the related policies or procedures, if any, shall be construed as a waiver of sovereign immunity or to make applicable any laws or regulations which the Nation is entitled to be exempt from in accordance with its sovereign status.

**SECTION 6.09. EFFECTIVE DATE**

The provisions of this Ordinance as amended, shall be effective as of the date of adoption by the Seneca Nation Council.