

**SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
CHAPTER ____
INDUSTRIAL HEMP**

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SISSETON-WAHPETON OYATE

**CHAPTER ____
INDUSTRIAL HEMP**

TITLE I – GENERAL PROVISIONS

__-01-01 TITLE.

This Code shall be known as the Industrial Hemp Code.

__-01-02 PURPOSE AND SCOPE.

This Code shall be construed to promote the following:

1. That the Sisseton-Wahpeton Oyate hereby exercises its inherent sovereign authority to enact legislation and possesses primary regulatory authority over all commerce, including industrial hemp on the Lake Traverse Reservation and those lands subsequently acquired by the Tribe.
2. That pursuant to the Treaty with the Sioux – Sisseton and Wahpeton Bands, 15 Stat. 505, considerable emphasis of the Treaty promotes agricultural improvement and prosperity. Specifically, Article X of the Treaty recognizes the right to “adopt such rules, regulations, or laws for ... the agricultural prosperity of the Members . . .”.
3. Pursuant to the Revised Constitution and By-Laws of the Sisseton-Wahpeton Oyate, the Tribal Council shall hold the authority to “engage in any business that will further the economic development of the Tribe and its Members, and to use tribal funds or other resources for such purposes.”
4. It is the declared policy of the Sisseton-Wahpeton Oyate that Hemp is a valuable agricultural crop and commodity within its jurisdiction. The purposes of this Chapter are to:

- a. Promote the production of Hemp, and the development of new commercial markets for farmers and businesses through the sale of Hemp Products;
- b. Enable research regarding the production of Hemp within the jurisdiction of the Sisseton-Wahpeton Oyate;
- c. Promote the creation and/or expansion of the Sisseton-Wahpeton Oyate's Hemp industry to the maximum extent permitted by law; and,
- d. Regulate Hemp as an agricultural commodity in compliance with all applicable laws and regulations.

__-01-03 SPECIFIC APPLICABILITY.

This Code shall apply to Industrial Hemp and shall take precedence over any tribal laws of general applicability.

__-01-04 EFFECTIVE DATE.

This Code shall be in full force and effect after formal approval and adoption by the Tribal Council and approval by the United States Department of Agriculture.

__-01-05 SOVEREIGN IMMUNITY NOT WAIVED.

By the adoption of this Code the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is tribal, federal, or state, and the adoption of this Code shall not be construed to be a waiver of the sovereign immunity of the Tribe, its offices, departments, agents, subsidiaries, corporations or enterprises nor a consent to suit against the Tribe in any court.

__-01-06 SEVERABILITY.

If any clause, sentence, paragraph, section or part of this Act shall be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder, but shall be confined in its operation to the clause, sentence, paragraph, section, or part, directly involved in the controversy in which the judgment was rendered.

__-01-07 AMENDMENT.

This Code may be amended only upon an affirmative vote of a majority of the Tribal Council of the Sisseton-Wahpeton Oyate. Any approved amendments to this Code hereunder will be submitted to USDA pursuant to the USDA hemp regulations at 7 CFR Part 990, *et seq.*, as amended from time to time.

__-01-08 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.

TITLE II – DEFINITIONS

__-02-01 DEFINITIONS.

The following definitions shall apply:

1. "Acceptable Hemp THC Level" means when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and with a measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of this Code is when the application of the measurement of uncertainty to the reported Decarboxylated 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 Decarboxylated delta-tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured Decarboxylated delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample range from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance). This definition of "Acceptable Hemp THC Level" affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of "marihuana," 21 U.S.C. 802(16), in the Controlled Substances Act.
2. "AMS Administrator" means the administrator of the U.S. Department of Agriculture Agricultural Marketing Service from time to time.
3. "Applicant" means an individual or person authorized to sign for a business entity, that has applied to participate in the Sisseton-Wahpeton Oyate Hemp Program and are awaiting approval.
4. "CBD" means cannabidiol.
5. "Commissioner" means board members of the Commission created under this statute to regulate Industrial Hemp.
6. "Commercial Sales" means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the internet.
7. "Consumable Product" means Hemp Product intended for human or animal consumption.
8. "Decarboxylated" means the completion of the chemical reaction that converts THC-acid (THC-A) into Delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums Delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
9. "Delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).
10. "Department" means the department within the Sisseton-Wahpeton Oyate delegated with oversight of the hemp program.
11. "Director" means the Director of the Sisseton-Wahpeton Oyate Department delegated with oversight of the hemp program.
12. "Familial Interest" means an individual who is related to a Commissioner, which includes husband, wife, partner, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, or stepchild. Familial Interest also including any and all co-habitants of a Commissioner.
13. "FSA" means the United States Department of Agriculture Farm Service Agency.
14. "GPS" means global positioning system.

15. "Grow Site" has the same meaning as "Registered Land Area" as that termed is defined in this Section.
16. "Harvest Lot Identifier" means a unique identifier used by the Sisseton-Wahpeton Oyate Natural Resources Department to identify the Harvest Lot.
17. "Harvest Lot" means a quantity of Hemp, of the same variety, harvested in a distinct timeframe that is:
 - a. Cultivated in one contiguous production area within a Grow Site; or
 - b. Cultivated in a portion or portions of one contiguous production area within a Grow Site. Harvest Lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.
18. "Hemp Processor means any Person processing, manufacturing, extracting, or producing hemp-based products.
19. "Hemp Producer means any Person growing or cultivating hemp, hemp seeds, or hemp propagules.
20. "Hemp Product" means a finished product that is derived from, or made by, processing Hemp and that is prepared in a form available for commercial sale. The term includes, but is not limited to cosmetics, personal care products, consumable products, cloth, cordage, fiber, hempcrete, fuel, paint, paper, particleboard, plastics, and any products containing one or more Hemp ingredients such as cannabidiol.
21. "Hemp Program" means the cannabis regulatory framework established under this Code with respect to Hemp.
22. "Hemp Seller means any Person marketing, brokering, distributing, or selling, wholesale or retail, hemp or hemp-based products.
23. "Hemp" or "Industrial 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 Decarboxylated THC concentration of not more than the Acceptable Hemp THC Level on a dry weight basis, or as otherwise set forth in the USDA hemp regulations at 7 CFR Part 990, *et seq.* from time to time.
24. "Indian" means any person who is a member of a federally recognized Indian tribe, band, group, pueblo, or community.
25. "Intended for Consumption" or "Consumable" means intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.
26. "Jurisdiction" or "Jurisdiction of the Tribe" means the Tribe's criminal, regulatory, and adjudicatory jurisdiction exercised on all lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 and those lands subsequently acquired by the Sisseton-Wahpeton Oyate, regardless of whether such land is held in trust, fee, or subject to restrictions; provided that as to non-Indians the jurisdiction of the Tribe extends to such lands within the Reservation that are held in trust, have been allotted, or are subject to restrictions.
27. "Key Participant" means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation, limited liability company or any other corporate entity. 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.

28. "Law Enforcement Officer" means any person employed by Sisseton Wahpeton Law Enforcement who is authorized to make arrests for violations of the laws or ordinances and that the person is employed to enforce.
29. "Law Enforcement" or "SWLE" means the Sisseton Wahpeton Law Enforcement.
30. "License" means a permit issued by the Department to an individual or business to grow, process, manufacture, distribute or transport hemp or hemp-based products. A valid license means that the license is unexpired, unsuspended, and unrevoked.
31. "Licensee" means any Hemp Producer licensed by the Sisseton-Wahpeton Oyate Natural Resources Department.
32. "Member" means an enrolled Member of the Tribe as defined by the Constitution of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.
33. "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations.
34. "Person/s" or "Individuals" means all natural persons and all legal entities, including but not limited to corporations, foundations, organizations, business trusts, estates, limited liability companies, partnerships, limited liability partnerships, associations, or any other form of business entity (regardless of jurisdiction of formation) as well as tribal, federal, state, local or international governmental entities. Sisseton-Wahpeton Oyate Tribal entities including any agencies, offices, enterprises, corporations, and political subdivisions, such as Community governments of Sisseton-Wahpeton Oyate Tribe which apply for a License.
35. "Registered Land Area" means a contiguous lot, parcel, or tract of land registered with the Sisseton-Wahpeton Oyate Natural Resources Department in use by a Hemp Producer. A registered land area may include land and buildings that are not used in the cultivation of hemp.
36. "THC" means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post decarboxylation including the calculated equivalent of delta-9-THC available from measured THC-acid.
37. "Tribal Council" means the tribal council and governing body of the Tribe.
38. "Tribal Courts" or "Courts" means the Sisseton-Wahpeton Oyate Tribal Court and the Sisseton-Wahpeton Oyate Supreme Court.
39. "USDA" means the United States Department of Agriculture.
40. "Tribal Lands" means all lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 and those lands subsequently acquired by the Sisseton-Wahpeton Oyate.
41. "Tribe" means the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and includes its activities, programs, agencies, departments, divisions, instrumentalities, economic development enterprises, and their respective officials.
42. "Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic

composition.

TITLE III DEPARTMENT

__-03-01 Sisseton-Wahpeton Oyate Natural Resources Department.

The Sisseton-Wahpeton Oyate Natural Resources Department shall have the duty and authority regulate, through the Hemp Board of Commissioners, Industrial Hemp on the Lake Traverse Reservation. In furtherance of this duty and authority:

1. Hemp Producers must obtain a License from the Department prior to engaging in such activity.
2. Hemp Producers shall provide to the Department the legal description and GPS coordinates sufficient for locating the Registered Land Area and each field, greenhouse, or structure where the person cultivates hemp, or intends to cultivate hemp.
3. Notwithstanding any rule of regulation to the contrary, the inclusion of hemp as an ingredient in a consumable product shall not be itself render the product misbranded or adulterated.
4. All Hemp Producer Applications approved shall be maintained for a period of at least three (3) years.

__-03-02 Inspections.

The Department shall have the authority and responsibility to conduct inspections of hemp producers, and all registered land areas to verify compliance with all requirements of the License issued in accordance with the provisions of this Title. Inspection may include sampling by the Department inspectors for testing to determine hemp or hemp product THC levels or for any other Department defined purpose. Inspections and testing shall be conducted at a minimum annually, and may be conducted randomly, or otherwise.

TITLE IV HEMP BOARD OF COMMISSIONERS

__-04-01 Hemp Board of Commissioners.

1. Creation and Delegation of Authority to the Hemp Board of Commissioners (the "Commission"). The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby creates the Hemp Board of Commissioners which shall be located within the Natural Resources Department and delegates certain authority to the Hemp Board of Commissioners to carry out the policies and requirements established by this law for all Industrial Hemp activities within the Reservation and those lands and property subsequently acquired by the Sisseton-Wahpeton Oyate.
2. Appointment and Officers.
 - a. The Commission shall consist of three (3) persons meeting the qualifications and one ex-officio Tribal Council Member. The Tribal Council shall appoint commissioners and the Ex-Officio. Minimum qualifications for the Commission:

- 1) Can demonstrate experience and knowledge in government affairs, agriculture, hemp, business, or law, or Tribal government regulatory experience; and an understanding of applicable laws regarding hemp and the hemp industry;
 - 2) Have a completed and approved background check conducted prior to voting on any matters;
 - 3) Shall not have been convicted of a felony relating to a controlled substance under Tribal, State or Federal law before, on, or after December 20, 2018; and
 - 4) Shall not be a Department employee.
- b. The Commission shall elect from among its Members a Chair, Vice-Chair, Secretary and Treasurer. In the absence of the Chair, the Vice-Chair shall preside and in the absence of both the Chair and Vice-Chair, the Secretary shall preside.
- c. Officers.
- 1) Commission Chair.
 - a) The Commission Chair serves as the Commission meeting facilitator and promotes good board leadership and governance.
 - b) The Commission Chair keeps the board focused on issues that promotes the Department's mission, vision and strategic direction.
 - c) The Commission Chair works collaboratively with the Director and the Secretary to establish meeting agendas.
 - d) The Commission Chair shall vote only in the event of a tie.
 - 2) Commission Vice-Chair.
 - a) The Vice-Chair shall keep full and accurate financial records, make periodic reports to the Commission, and submit a complete annual report in written form to the Tribal Council.
 - b) The Vice-Chair shall preside over meetings in the absence of the Chair.
 - 3) Commission Secretary
 - a) The Commission Secretary shall keep complete and accurate records of all meetings and actions taken by the Commission.
 - b) The Commission Secretary works collaboratively with the Commission Chair and Executive Director to establish meeting agendas.
 - c) The Commission Secretary shall preside in the absence of the Chair and the Vice-Chair
3. Meetings. Meetings of the Commission shall be held at regular intervals as provided in the By-Laws. Emergency meetings may be held upon twenty-four (24) hours actual notice, and business transacted, provided that not less than a majority of the full Commission concurs with the proposed action.
4. Voting. A majority of the full Commission notwithstanding the existence of any vacancies shall constitute a quorum for the transaction of business. No action shall be taken by a vote of less than a majority of such full Commission.
5. Conflict of Interest.
- a. The Commission shall prohibit any conflict of interest in the operation of their duties. This includes but is not limited to matters involving the selection, services and actions of the Commission including actions taken in and the

- procurement of supplies, equipment, other property, construction and services.
- b. During their tenure and for one year thereafter, no Commissioner who exercises any responsibilities or functions with regard to Department projects, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any licensed hemp project, or in any contract or proposed contract relating to any licensed hemp project, unless prior to such acquisition, they disclose their interest in writing to the Department and Commission, and such disclosure is entered upon the minutes of the Commission.
 - c. A Commissioner shall not participate in any action by the Commission relating to application, contracts, hemp licenses, or other business in which they have any personal, financial or familial interest. Any violation of the foregoing provisions of this Section shall constitute misconduct.
6. Compensation.
- a. Members of the Commission may receive a stipend, as eligibility and budget permits, and shall be reimbursed for any reasonable and documented expenses actually incurred in connection with their performance of duties and responsibilities.
 - b. The Commission shall establish a proposed budget delineating the Commission's compensation and training and ensure the budget complies with funding guidelines and tribal law and policy.
7. Removal, Vacancy and Interim Appointment.
- a. Removal by Tribal Council. A Commissioner may be removed only for cause by the Tribal Council, with a preference for non-removal in order to provide stability and predictability to the Commission.
 - b. Resignation. A Commissioner may resign at any time and the resignation shall be made in writing to the Commission and Tribal Council.
8. Terms of Office. Commissioners shall serve a term of four (4) years; there are no conditions on how many terms a Commissioner may serve.
9. Authority and Duties of Board of Commissioners.
- a. To hold formal hearings, hear appeals, issue notice of the hearing, and call for the required witnesses and documents, according to the hearing procedures set forth in this Chapter and the rules, regulations and/or guidelines promulgated by the Commission. The Commission may appoint a hearing officer if it deems necessary in extremely complex hearing.
 - b. To perform any of the duties and functions specified in this Code.
 - c. To rent, lease, or equip any building or land necessary to carry out the provisions of this code.
 - d. To retain counsel.
 - e. To hire staff, which specifically includes a Hemp Agricultural Program Director within the Natural Resources Department to administer the program and policies of the Commission. The Commission may outsource this staff as needed, including to other offices, agencies, and arms of the SWO.
 - f. To appoint vendors, clerks, or, agents required for carrying out the provisions of this Code; to dismiss such employees for cause; and to designate their title, duties, and powers.
 - g. The Commission shall institute a policy of tribal preference for all contracts and employees.

- h. To accept and process applications and to grant Licenses provided for by this Code.
 - i. To set schedule for fees and fines, and to collect such fees and fines. Proceeds of which revert to the Commission and Department.
 - j. The Commission shall have such other powers and duties necessary and proper to carry out the provisions of this Code.
 - k. The Commission shall adopt and promulgate such rules, regulations, fees and fines that are necessary to carry out the provisions of this Code.
10. Confidentiality. All information, documentation, records and other written materials shall be kept confidential unless otherwise approved by the Commission or Tribal Council or required by law. Commissioners, Director and Department staff shall comply with all confidentiality requirements. Confidential information shall include, without limitation, all applications, financial records or other business documents, resumes and background information. No persons other than Commissioners, Director and Department staff shall have access to confidential information except an authorized representative. No information shall be photocopied or removed, unless approved in writing by the Director, Commission or Tribal Council.

TITLE V LICENSING AND FEES

-05-01 Applications.

1. Application Hemp Producer License.
 - a. Any Person desiring to produce hemp at any location within the jurisdiction of the Sisseton-Wahpeton Oyate shall submit to the Department a completed Hemp Producer license application.
 - b. The Applicant shall submit a signed, complete, accurate and legible application form provided by the Department at least thirty (30) days prior to intended planting that includes, at a minimum, the following information:
 - 1) Full name and contact information, including business address, telephone number, and email address (if available);
 - 2) Location of the grow or business, including the legal land description and a map identifying the location, which may also include a global positioning system (GPS) location, to the extent practicable, which shall become the Registered Land Area;
 - 3) If the Applicant represents a business entity, full legal entity name of the business, the principle Sisseton-Wahpeton Oyate business location address, employer identification number, full name of the Applicant who will have signing authority on behalf of the entity along with title and full contact information, and the full name, title, and email address (if available) of each employee and investor who must submit a criminal history record report, including Key Participants and those persons with executive managerial control;
 - 4) A completed criminal background check report for the Applicant on a form determined by the Department demonstrating that the Applicant does not have any disqualifying felony drug convictions pursuant to this code;
 - 5) Acreage of greenhouse or indoor square footage dedicated to the production of hemp;
 - 6) Consent to an annual criminal background check going forward;

- 7) An application fee as set approved by the Commission and administered by the Department;
 - 8) Consent to the laws, courts, rules and procedures of the Sisseton-Wahpeton Oyate;
 - 9) Consent to inspection and tetrahydrocannabinol testing;
 - 10) Consent to comply with any reporting requirements and update the Department on any changes in information previously submitted to the Department;
 - 11) Affirmation that all hemp and hemp products will have a Decarboxylated THC concentration of not more than the Acceptable Hemp THC Level on a dry weight basis;
 - 12) Consent to the potential disposal, forfeiture, and/or destruction of any hemp or hemp product with a Decarboxylated THC concentration of more than the Acceptable Hemp THC Level on a dry weight basis pursuant to the procedures outlined in this code and subsequent regulations; and
 - 13) Any other information or disclosure required to be submitted by Tribal and applicable federal and state regulation.
2. Reporting to USDA. Information provided to the Department in an Applicant's application may be reported to the USDA to the extent required under 7 C.F.R. § 990, *et. seq.*
 3. Personal Use. No license is required by any Person within the Sisseton-Wahpeton Oyate Tribe's Tribal Territory personal possession/personal use of hemp or hemp products.
 4. Fees. As set by the Commission.
 5. Ineligible for a license.
 - a. Any Person under the age of 18;
 - b. Any Person convicted of a felony, or Class A Offense, relating to a controlled substance under tribal, state, or federal law, shall be ineligible to obtain a hemp license for a period of ten (10) years from the date of such offense; provided, however, that 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; and, provided, further, that, an exemption applies to any producer growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before October 31, 2019.
 - c. Any Person who materially falsifies any information contained in their license application; and
 - d. Any Person who materially fails to comply with the license requirements.
 6. Licensee restrictions.
 - a. Licensees cannot employ or partner with any Person, including Key Participants and individuals with executive managerial control, within their hemp business, convicted of a felony, or Class A Offense, relating to a controlled substance under tribal, state, or federal law, within a period of ten (10) years from the date of conviction of such offense, or who would otherwise be ineligible from participating in the tribal hemp program in accordance with this Code; provided, however, that 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. Licensees shall not allow unsupervised access to hemp plots and hemp processing or manufacturing facilities.
7. No grandfather clause. Regardless of whether a Person was already producing hemp prior to the passage of this Code, they must now apply for a License.
8. License identifier. The Department shall assign each Hemp Producer a License identifier in a format prescribed by USDA.
9. Non-transferability. Licenses cannot be assigned or transferred to another Person.
10. Agents. Licensee is responsible for all individuals that will engage with Hemp and Hemp Products on their behalf.
11. Access. License holders must have the legal authority to grant access to the land or premises for inspection and sampling. Applicants must have the legal right to produce hemp on the Registered Land Area and the legal authority to grant the Department access for inspection and sampling.
12. Terms and conditions. By submitting an application, the Applicant acknowledges and agrees to the following minimum terms and conditions:
 - a. Any information provided to the Department may be provided to law enforcement agencies without further notice to Applicant;
 - b. The Applicant or Licensee shall allow and fully cooperate with any inspection and sampling that the Department deem necessary;
 - c. The Applicant or Licensee shall pay for any inspection and laboratory analysis costs that the Department deems necessary within thirty (30) days of the date of the invoice; provided that the Licensee shall not be required to pay for more than one (1) Department inspection and associated laboratory analysis costs per lot per year;
 - d. The Applicant or Licensee shall submit all required reports by the applicable due date specified by the Director;
 - e. Applicants shall submit fingerprints and pay criminal background check fees directly to the Department, Sisseton Wahpeton Law Enforcement or other entity designated by the Department to obtain a criminal history background check report; and
 - f. The Applicant or Licensee must report any felony convictions, including those of its employees, partners, management, Key Participants, contractors, agents, or representatives, relating to controlled substances under tribal, federal or state law to the Department within five (5) business days of receiving notice of such conviction;
 - g. All Licenses shall be valid for one (1) year from the date of issuance, unless otherwise extended, or revoked at an earlier date for non-compliance; and
 - h. Current and valid Licenses may be renewed annually or as otherwise determined by the Department by submitting a renewal application to the Director on a form provided by the Department no later than thirty (30) days prior to the date of the License expiration.

__-05-02 Fees & Fines

1. The Commission shall set an annual fee schedule.
2. The annual fee schedule shall include, but is not limited to:
 - a. Application fee;

- b. Licensing fee;
 - c. Background check fees;
 - d. Laboratory analysis, testing and sampling costs.
3. Fees and fines shall be retained by the Commission and the Department to cover necessary costs of administering and enforcing this Chapter.

__-05-03 Criminal Background.

1. Criminal Background Required. Any person convicted of a felony relating to a controlled substance under tribal, federal or state law shall be ineligible, during the ten (10) year period following the date of conviction, to receive licensure by the Department. Failure to submit to background check requirements shall be grounds for license denial. The following shall be required:
 - a. Applicants are required to submit to and pay for a criminal background check.
 - b. Applicants shall provide a criminal background report and/or survey to the Department at the time application is submitted.
 - c. Business entities shall submit to background checks for all Key Participants.

**TITLE VI
APPEALS PROCESS**

__-06-01 Appeal from Denial of Application.

Any Applicant that is denied by Department may appeal to the Commission. The Commission will schedule a hearing within thirty (30) days. Persons requesting an appeal may indicate within their request whether thirty (30) days would create an unreasonable hardship. Requests for an appeal shall be made in writing postmarked within fifteen (15) days of the date of the Department's notification by letter or email.

__-06-02 Appeal from License Suspension or Revocation.

Any person whose License has been suspended or revoked by the Department may appeal to the Commission. The Commission will schedule a hearing within thirty (30) days. Persons requesting an appeal may indicate within their request whether thirty (30) days would create an unreasonable hardship. Requests for an appeal shall be made in writing postmarked within fifteen (15) days of the date of the Department's notification by letter or email.

__-06-03 Commission Hearing.

1. A hearing with the Commission shall be conducted in accordance with the guidelines established by the Commission.
2. The Commission shall not be required to accept or consider information or documentation that was not compliant with application deadlines established.
3. Hearings on appeals shall be open to the public and occur at a time, date and location designated by the Commission.
4. An appealing Applicant 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 upon majority vote.

6. The determination of the Commission shall be the final administrative decision, subject only to judicial review.

TITLE VII SAMPLING, TESTING, AND INSPECTION

-07-01 Sampling.

1. The Department will utilize the USDA Sampling Guidelines for Hemp Growing Facilities, as may be amended from time to time, for purposes of establishing procedures for effectively collecting samples for testing the delta-9 tetrahydrocannabinol concentration levels of hemp produced within the Tribe's territory using post-decarboxylation or other similarly reliable methods.
2. The sampling methods used under this Title VII must ensure that a representative sample is collected that represents a homogenous composition of the lot and must be sufficient at a confidence level of 95% that no more than 1% of plants would exceed the Acceptable Hemp THC Level.
3. Sampling of cannabis under this Code shall also be in accordance with the following:
 - a. A Hemp Producer must arrange for and ensure the sampling of a Harvest Lot no more than fifteen (15) days (or the number of days established by USDA if more than 15 days) prior to harvest for the purpose of ensuring that the Harvest Lot does not exceed the Acceptable Hemp THC Level on a dry weight basis.
 - b. A Hemp Producer shall not remove a Harvest Lot from a Registered Land Area that has not been sampled for compliance in accordance with this Title.
 - c. Samples of hemp plant material from one Harvest Lot shall not be commingled with hemp plant material from other Harvest Lots.
 - d. Except for samples collected by the Department for compliance inspection and auditing purposes, all samples collected to determine compliance with these rules shall be collected by an approved federal, state, local, or tribal law enforcement agency, or other federal, state, local, or tribal designated person. Such samples shall include the flower material from hemp crop for delta-9 tetrahydrocannabinol concentration testing purposes.
 - e. During a scheduled sample collection, the Hemp Producer or an authorized representative thereof shall be present at the growing site.
 - f. Representatives of the sampling agency and the Department shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the Licensee's License.
4. All samples collected by the Department shall become the property of the Department and no compensation shall be owed by the Department for such samples. The Department shall keep all test results for a minimum of three (3) years.
5. Nothing in this Section shall prevent a Licensee from voluntarily collecting samples and testing Hemp and Hemp Product for quality assurance and research

and development purposes. The test results from voluntary tests performed by the Licensee shall not be sufficient to evidence compliance with this Code.

__-07-02 Testing.

1. The Department will utilize the USDA Testing Guidelines for Identifying Delta-9 Tetrahydrocannabinol Concentration in Hemp, as may be amended from time to time, for purposes of establishing procedures for testing the delta-9 tetrahydrocannabinol concentration levels of hemp produced on or sold from the Lake Traverse Reservation, using validated testing methodologies that utilize post-decarboxylation or other similarly reliable methods.
2. The total THC concentration level shall be determined and reported on a dry weight basis, and the testing methodology shall consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC. Test results will measure total available THC derived from the sum of the THC and THC-A content.
3. Permitted testing methodologies include, but are not limited to, gas or liquid chromatography with detection.
4. Samples of hemp plant material from one Harvest Lot shall not be commingled with hemp plant material from other Harvest Lots during the testing process.
5. Compliance and safety testing for Hemp and Hemp Products required by this Code shall be conducted by a DEA-registered laboratory.
6. Representative samples collected from a Harvest Lot in accordance with this Title shall be delivered to and tested at a DEA-registered laboratory, or other laboratories authorized by the USDA, using a reliable methodology for delta-9 tetrahydrocannabinol testing. Any such analytical testing for purposes of detecting the concentration levels of THC shall comply with the standards set forth in 7 C.F.R. § 990.3(a)(3)(iii) and 7 C.F.R. § 990.25, including using procedures to adhere to standards of performance for detecting THC concentration and using a measurement of uncertainty.
7. Any test of a representative sample resulting in higher than the Acceptable Hemp THC Level shall be conclusive evidence that the Harvest Lot represented by the sample is not in compliance with this Code. Harvest Lots tested and not certified by a DEA-registered laboratory at or below the Acceptable Hemp THC Level may not be further handled, processed, or enter the stream of commerce. Cannabis containing more than the Acceptable Hemp THC Level is prohibited to be transferred or sold and must be disposed of in accordance with the provisions of **Section __-07-04**.

__-07-03 Inspection.

1. Inspection visits may be conducted at any time without prior notice and during regular business hours.
2. The Department shall conduct annual inspections of, at a minimum, a random sample of Licensees to verify that hemp and hemp products and all Registered Land Areas comply with all requirements of the License issued and the provisions of this Code. The Department, in conjunction with tribal law

enforcement, may conduct random samples of Hemp Products and Hemp Processors within the Tribe's territory.

3. The Department and its inspectors shall be granted unrestricted access to the Registered Land Area(s).
4. The provisions set forth in Title XIII will apply to any Licensee found to be in violation of this Code following any inspection.

__-07-04 Disposal.

1. Hemp Producer Licensees shall have fourteen (14) calendar days from the date of notification of test results higher than the Acceptable Hemp THC Level to contact the Commission in writing and coordinate a method for destruction of such cannabis crop in accordance with this Section. Cannabis that tests higher than the Acceptable Hemp THC Level shall constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (21 U.S.C. §§ 801 et seq.) (the "CSA") and must be disposed of by the Hemp Producer in compliance with this Section and subsequent regulations, including disposal regulations under the CSA, and DEA regulations, including 21 C.F.R. §§ 1317.15, 1317.90, and 1317.95.
2. The Commission shall have a preference for the full utilization of a crop if possible and these rules requiring disposal and destruction shall be amended pursuant to more flexible USDA regulations.
3. All harvested cannabis cultivated within the same lot as the cannabis sample that tests higher than the Acceptable Hemp THC Level shall be promptly disposed of by the Hemp Producer in accordance with federal regulations.
4. Plants subject to destruction pursuant to this Section shall not be removed unless authorized by the Department.
5. The Hemp Producer shall provide any and all evidence requested to verify disposal to the satisfaction of the Department, including information related to:
 - a. The name and address of the Hemp Producer;
 - b. The Hemp Producer's license or authorization identifier;
 - c. Location information, including lot number, location type, and geospatial location (to the extent practicable) or other location description for the Harvest Lot subject to disposal;
 - d. Information on the agent handling the disposal;
 - e. Disposal completion date; and
 - f. Total acreage disposed.
6. The Department shall promptly notify the AMS Administrator of any occurrence of cannabis plants or plant material that do not meet the definition of Hemp and will attach the test results and disposal records demonstrating the appropriate disposal of all of those plants and materials in the Harvest Lot from which the representative samples were taken.

**TITLE VIII
TRANSPORTATION**

__-08-01 Interstate Transportation.

1. Licensees and their agents shall carry a copy of their Producer's license and their crop test results anytime that hemp plants, parts or products are in transit. Each licensed grower or processor shall make such license and crop test results available for inspection at the request of Department, Sisseton Wahpeton Law Enforcement or any other applicable law enforcement agency when within that jurisdiction.

TITLE IX REPORTING REQUIREMENTS

__-09-01 Licensee Reporting Requirements to Department and Commission.

1. Changes of Information. Licensees must report any changes of contact information or other information submitted in such Licensee's application to the Department in writing within fourteen (14) days of the change.
2. Commission Reports. The Commission may at its discretion require the Department to collect annual harvest reports of Licensees which may include information on: seed variety, acreage harvested, acreage of greenhouse or indoor square footage dedicated to the production of hemp, field location including geospatial location of each lot or greenhouse where hemp is produced, agricultural techniques, status of licensed producers and any changes, License identifiers, production and sales, end use of product, total acreage of hemp planted, harvested and, if applicable, disposed, and any other report information deemed necessary by the Commission to which the licensee has consented in the license application. The Commission shall weigh the burden on the reporting parties. All proprietary and individually identifiable information shall be confidential.
3. To the extent required, the Commission will report and share any such information to AMS, the USDA, and the FSA, including pursuant to 7 C.F.R. § 990.3(a)(9), in order to support the information sharing requirements in 7 U.S.C. § 1639q(d).
4. Planting Report. Within fourteen (14) days after planting any hemp, each Hemp Producer shall submit, on a form provided by the Department, a planting report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of hemp planted.

__-09-02 Licensee & Department Reporting Requirements to Federal Government.

1. Reporting to USDA.
 - a. Tribal Monthly: "USDA Producer and Disposal Report." On the first of each month, the Department will submit to the USDA a report, in the format compatible with USDA's information sharing system, containing the following:
 - 1) the time period covered by the report;
 - 2) if applicable, an indication that there were no changes during the time period;
 - 3) contact information for each Hemp Producer:
 - i) if an individual then full name, license identifier, business address, telephone number, and email address (if available);

- ii) if an entity then full name of entity, principle business location address, employer identification number, license identifier, and full name, title, and phone and email for each employee and investor who must submit a criminal history, including Key Participants;
 - 4) a legal description of each Hemp Producer's land, including to the extent practicable, geospatial location;
 - 5) the acreage, or indoor square footage dedicated to the production of hemp for each Hemp Producer;
 - 6) the license number for each producer;
 - 7) the status or status change, and number of each Hemp Producer's License, including previously reported information and new information;
 - 8) if there have been any disposals that month, the report must also include:
 - i) Name and address of the Hemp Producer;
 - ii) Hemp Producer License number;
 - iii) Location information (such as lot number, location type, and if practicable geospatial location) for the production area subject to disposal;
 - iv) Information on the agent who handled the disposal;
 - v) Disposal completion date; and
 - vi) Total acreage disposed.
- b. Tribal Annual: "USDA Acreage report." Annually, by December 15 of each year, the Department shall report, in the format compatible with USDA's information sharing system, to the USDA the following:
- 1) Total planted acreage;
 - 2) Total harvested acreage; and
 - 3) Total acreage disposed.
- c. Hemp Producer: "Report to FSA." In addition to providing it to the Department, each Hemp Producer is responsible for submitting the following information to the FSA:
- 1) Street address, and to the extent practicable geospatial location, for each Harvest Lot or indoor growing facility where such producer grows hemp;
 - 2) Total acreage, or indoor square footage dedicated to hemp production; and
 - 3) License identifier number.
- d. Hemp Producer: "Test Results Report." Each Hemp Producer will work with the DEA-registered laboratory that conducts the test of sample(s) of hemp crop collected in accordance with Title VII from the Hemp Producer's lot(s) to ensure that the test results for all such sample(s) include information required under 7 C.F.R. § 990.70(d) and are reported to USDA.

-09-03 Department Reporting Requirements.

- 1. Retention. The Department and Commission shall maintain information on hemp licenses, license applications, and other relevant information regarding land on which hemp is produced, including a legal description of the land, for a period of not less than 3 calendar years.
- 2. Department Recordkeeping and Reporting Requirements are as follows:
 - a. Department shall retain for a period of at least three (3) calendar years, all information required to be collected or submitted pursuant to this Chapter.
 - b. The Department shall report annually to the Tribal Council on the fee amount, the acres of Industrial hemp in production and the revenue generated

from industrial hemp.

__-09-04 Confidentiality. Except as required by law, the Commission shall protect the privacy of the following collected information: proprietary information, all personally identifiable information including name; physical address; drivers' licenses; social security numbers; GPS coordinates; telephone numbers; email address. Such information shall be shielded by the Commission to the maximum extent permitted by law.

TITLE X VIOLATIONS

__-10-01 _____.

A violation of this Chapter shall be subject to enforcement in accordance with this Title.

__-10-02 Negligent Violations.

1. Negligent license violations. A hemp licensee has negligently violated the requirements of this Code if they:
 - a. Fail to provide a legal description of land on which the producer produces hemp or the location of the hemp related business, or, provide an inaccurate or false location;
 - b. Fail to obtain a License or other required authorization from the Tribe;
 - c. Produce Cannabis sativa L. with a Decarboxylated tetrahydrocannabinol concentration of more than the Acceptable Hemp THC Level on a dry weight basis; or
 - d. Fail to comply with one of the other listed License requirements.
2. Reasonable efforts. Notwithstanding the provisions of **Section __-10-02.1.c.**, a Hemp Producer does not commit negligence under this Section if such Hemp Producer (a) makes reasonable efforts to grow Hemp, and (b) the Cannabis sativa L does not have a Decarboxylated tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis. For purposes of this **Section __-10-02.2**, the Department shall determine whether a Hemp Producer has taken reasonable efforts to grow Hemp. Reasonable efforts involve taking necessary steps and precautions to produce Hemp, and may include without limitation using certified seed, using other seed that has reliably grown compliant plants, or engaging in other best practices.
3. Corrective action plan. To correct a negligent violation, the Licensee shall enter into a corrective action plan, which shall include:
 - a. a reasonable date to correct the negligent violation;
 - b. a requirement that the Licensee report bi-annually to the Commission regarding their ongoing compliance with the applicable corrective action plan for a period of two (2) calendar years from the date of the negligent violation;
 - c. a requirement that the Licensee shall submit to inspections by the Department to determine if the applicable corrective action plan has been implemented as submitted; and
 - d. a requirement that the Licensee shall pay any civil fines issued by the Commission as a result of the violations.

4. Repeat negligent violations. A Licensee that negligently violates this Section three (3) times in a five (5) year period shall be ineligible for a tribal hemp license and shall be ineligible to produce hemp for a period of five (5) years beginning on the date of the third violation.
5. Potential criminal liability for negligent violations. A Licensee who negligently violates this Code shall not be subject to any criminal enforcement action by a federal, state, or tribal government.
6. Violations with culpable mental state greater than negligence. If the Commission determines a Licensee has violated this Code with a culpable mental state greater than negligence, they shall immediately report the Licensee to the chief tribal law enforcement and the United States Attorney General. The provisions set forth in Sections -10-02.1 to -10-02.4 shall not apply to this Section -10-02.5.

CERTIFICATION

Sisseton-Wahpeton Oyate Natural Resources Department

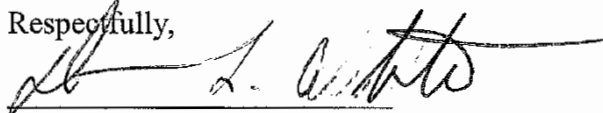
Hemp Program Certification

by Chairman Donovan White

Pursuant to Section 297B(a)(2)(A)(vii) of the Agriculture Improvement Act of 2018 and 7 C.F.R. § 990.3(a)(8), I certify that the Sisseton-Wahpeton Oyate Natural Resources Department has the resources and personnel necessary to carry out each of the practices and procedures identified in Section 297B(a)(2) of the Act, 7 C.F.R. §§ 990.3(a)(1)-(7), and this Code. The Sisseton-Wahpeton Oyate Natural Resources Department has significant experience in working collaboratively to protect, conserve, and manage the natural and wildlife resources within the Lake Traverse Reservation, and is well positioned with the resources, staff, and agricultural expertise to oversee the Tribe's hemp program.

Date: March 2, 2020

Respectfully,



Donovan White, Chairman of the Sisseton-Wahpeton Oyate