

STANDING ROCK SIOUX TRIBE

Industrial Hemp Production Plan

Submitted for USDA Approval: January 13, 2020

Approved: March 10, 2020

STANDING ROCK SIOUX TRIBE

Industrial Hemp Production Plan

The Standing Rock Sioux Tribe (“Tribe”) is a Federally recognized Indian tribe located on the Standing Rock Sioux Reservation (“Reservation”), which spans 2.3 million acres across Sioux County, ND and Corson County, SD. Through this Plan and pursuant to Agricultural Improvement Act of 2018, the Tribe hereby assumes primary regulatory authority over the production of hemp on the Reservation.

This Plan contains two parts. The Standing Rock Sioux Tribal Council has approved for submission the Standing Rock Sioux Tribe Code of Justice Industrial Hemp Regulations (“Hemp Ordinance”), attached herein as Appendix A. In addition, upon approval of this Plan, the Standing Rock Sioux Tribe Commissioner of Agriculture (“Commissioner”) will promulgate implementing regulations pursuant to § 302 of the Hemp Ordinance. These implementing regulations will contain, at a minimum, the provisions contained in this document. Read together, the provisions of the Hemp Ordinance and implementing regulations contain:

- (1) A practice to maintain relevant information regarding land on which hemp is produced in the territory of the Indian tribe, including a legal description of the land, for a period of not less than three calendar years;
- (2) A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the territory of the Indian tribe;
- (3) A procedure for the effective disposal of plants, whether growing or not, that are produced in violation of the Farm Bill and products derived from those plants;
- (4) A procedure to comply with enforcement as set forth in the Farm Bill;
- (5) A procedure for conducting annual inspections of, at a minimum, a random sample of Licensees to verify that hemp is not produced in violation of the Farm Bill;
- (6) A procedure for submitting the information required by the Farm Bill, as applicable, to the USDA not more than 30 days after the date on which the information is received; and
- (7) A certification that the Indian tribe has the resources and personnel to carry out the practices and procedures described above.

ARTICLE I
Definitions

For purposes of this Plan, all terms defined in § 201 of the Hemp Ordinance shall have the meanings defined therein. In addition, the following terms have the following meanings:

- (a) “Corrective action plan” means a plan established by the Commissioner for a Licensee to correct a negligent violation or non-compliance with this Plan.
- (b) “DEA” means the United States Drug Enforcement Administration.
- (c) "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-A.
- (d) “Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.
- (e) “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.
- (f) “FSA” means the USDA Farm Service Agency.
- (g) “Key participant” means a person with executive managerial control, 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.
- (h) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.
- (i) “Phytocannabinoid” means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 THC and cannabidiol (“CBD”).
- (j) “Postdecarboxylation” means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9 THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total

Standing Rock Sioux Tribe
Industrial Hemp Production Plan

potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC- A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample.

- (k) "USDA" means the United States Department of Agriculture.
- (l) "Variety" means a subdivision of a species that is uniform, in the sense that the variations in essential and distinctive characteristics are describable, stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties, and distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

ARTICLE II
Information Sharing

- (a) The Commissioner shall collect, maintain, and report to the USDA relevant, real-time information for each producer licensed or authorized to produce hemp on the Reservation. This information shall include:
 - (1) For each new Licensee who is an individual and is licensed or authorized under this Plan, the full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available);
 - (2) For each new Licensee that is an entity and is licensed or authorized under this Plan, the full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each key participant;
 - (3) A legal description of the land on which the Licensee will produce hemp on the Reservation, including, to the extent practicable, its geospatial location; and
 - (4) The status and number of the Licensee's license and authorization.
- (b) The Commissioner shall submit all federally-required reports in the appropriate manner, on time, and using USDA-approved forms where provided. These reports will include:
 - (1) Crop Acreage Report (FSA 578) to the FSA (annual – Appendix B);
 - (2) AMS-23 State and Tribal Hemp Producer Report (first business day of

each month – Appendix C);

- (3) Laboratory Tests Results Report to USDA (30 days after the information is received);
- (4) AMS-24 State and Tribal Hemp Disposal Report to USDA (first business day of each month – Appendix D); and
- (5) AMS-25 State and Tribal Hemp Annual Report to USDA (December 15 of each year – Appendix E).

ARTICLE III **Sampling**

- (a) The Commissioner shall conduct annual inspections of, at a minimum, a random sample of Licensees to verify that hemp is not produced in violation of federal law or this Plan. Notwithstanding whether a lot has been sampled pursuant to an annual inspection, all lots must undergo pre-harvest sampling.
- (b) A licensee shall not harvest any crop prior to pre-harvest samples being taken. The Licensee shall harvest the crop not more than 15 days following the date of sample collection. If the Licensee fails to complete the harvest within 15 days of sample collection, a secondary sample of the lot shall be required to be submitted for testing. The cost of all testing shall be paid by the Licensee.
- (c) Hemp plants and the material selected for sampling pursuant to an annual inspection or pre-harvest pursuant shall be determined by the Commissioner or his designee, not the Licensee. All samples of hemp material taken pursuant to this Plan are property of the Tribe and are non-returnable.
- (d) The Commissioner shall be a USDA-approved sampling agent, and shall only designate USDA-approved sampling agents to select and collect hemp material for sampling.
- (e) The selection of hemp for sampling, and the collection of samples, shall be conducted according to the USDA's Sampling Guidelines for Hemp Growing Facilities, attached as Appendix F.
- (f) The Licensee or an authorized representative shall be present during sample collection.
- (g) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Commissioner. Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the processor, or commingled, or extracted, until the Commissioner releases the material.

- (h) The Commissioner shall notify the Licensee within 30 days of sampling of the status of the testing and eligibility of the harvested materials to leave the Reservation and/or move into market. Any Licensee may request additional testing at its cost if it is believed that the original delta-9 THC concentration level test results were in error.

ARTICLE IV
Testing

- (a) The Commissioner shall submit sample material for testing to a DEA-registered lab using testing methodology able to accurately identify whether the sample contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of THC-A in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this Section include gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported by a dry weight basis.
- (b) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:
 - (1) Laboratory quality assurance must ensure the validity and reliability of test results;
 - (2) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;
 - (3) The demonstration of testing validity must ensure consistent, accurate analytical performance;
 - (4) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of these Regulations; and
 - (5) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of these Regulations. The procedure must be in accordance with DEA reverse distributor regulations found at 21 CFR § 1317.15, as amended.
- (c) Measurement of uncertainty must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing

activities and evaluate measurement of uncertainty.

- (d) Any 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 Plan. All harvested material from a lot found to be non-compliant must be segregated from other harvested lots and, all leaf and floral material from that lot must be destroyed. Lots tested and not certified by the DEA-registered lab at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.
- (e) The Tribe shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in this Plan and attach test results showing non-compliance as well as records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

ARTICLE V

Disposal of Non-Compliant Material

- (a) The Commissioner shall cause to be destroyed, without compensation to a Licensee, any hemp from the harvest of a lot determined not to be in compliance with this Plan, hemp located in an area that is not licensed under this Plan, or hemp that is not properly accounted for in required reporting to the Tribe or the USDA. For the purposes of this Article, “hemp” shall mean the leaf and floral material of a hemp plant or the entire plant material of a hemp plant, at the Commissioner’s discretion.
- (b) So long as the method chosen is in compliance with the Controlled Substances Act and DEA regulations, the Commissioner may use any method to ensure destruction of non-compliant hemp including, but not limited to, burning or composting where the hemp is made unusable and rendered indistinguishable from any other plant material.

ARTICLE VI

Corrective Action Plans

- (b) Licensees who are found to have a negligent violation will be subject to a corrective action plan, but shall not as a result of that violation be subject to any criminal enforcement action.
- (c) The Commissioner will consider the entire harvest from a distinct lot in determining whether a Licensee has negligently violated the acceptable hemp THC level pursuant to § 701(d)(4) of the Hemp Ordinance. For example, if testing determines that each

Standing Rock Sioux Tribe
Industrial Hemp Production Plan

sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level, the Commissioner shall consider this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

- (d) If the Commissioner determines that a negligent violation has occurred, the Commissioner will issue a Notice of Violation. This Notice of Violation will include a corrective action plan, which shall include, at a minimum:
 - (1) A reasonable date by which the hemp Licensee shall correct the negligent violation;
 - (2) Steps to correct each negligent violation; and
 - (3) A requirement that the Licensee shall periodically report to the Commissioner on compliance with this Plan for a period of not less than the next two calendar years from the date of the negligent violation.
- (e) The Commissioner may conduct inspections to determine if corrective action plans have been implemented as issued. If a subsequent violation occurs while a corrective action plan is in place, the Commissioner shall issue a new corrective action plan with a heightened level of quality control, staff training, and quantifiable action measures.

ARTICLE VI
Additional Provisions

- (a) Tribal regulation of hemp on the Reservation is necessary to protect the health, security, and general welfare of the Tribe and its members. In order to further these goals, the Tribe has adopted this Plan which shall be liberally construed to fulfill the purposes for which it has been adopted.
- (b) The regulations and penalties imposed by this Plan extend to any person within the Tribe's Jurisdiction, whether a Licensee or not.
- (c) Nothing in this Plan shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or the Tribal Police, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents, or authorize any form a prospective waiver of such sovereign immunity.
- (d) In the event that any phrase, provision, part, paragraph, subsection, or section of this Plan is found by a court of competent jurisdiction to violate the Constitution or laws of the

Standing Rock Sioux Tribe
Industrial Hemp Production Plan

Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Plan. The entirety of the balance of this Plan shall remain in full and binding force and effect.

ARTICLE VII
Certification

The Standing Rock Sioux Tribe hereby certifies that is has the resources and personnel required to carry out its responsibilities under this Plan.

Standing Rock Sioux Tribe
Industrial Hemp Production Plan

Submitted for USDA Approval this [date] January 2020.

Mike Faith, Chairman
Standing Rock Sioux Tribe

Standing Rock Sioux Tribe Code of Justice

Industrial Hemp Regulation

Chapter 1. Findings

101. Findings.

The Standing Rock Sioux Tribal Council finds:

(a) The Standing Rock Sioux Tribe faces significant challenges in alleviating poverty and its related social ills on the Standing Rock Sioux Reservation, and an important part of the Tribe's efforts to meet those challenges involves providing broader economic development opportunities.

(b) Industrial hemp is an agricultural commodity that has the potential to contribute to Reservation economic development. Industrial hemp has numerous beneficial economic uses, including for fiber, textiles, foods, cosmetics, rope and construction materials.

(c) Industrial hemp, as defined in this Title, is not marijuana and is not a controlled substance. The provisions of the Standing Rock Code of Justice, Title IV, Chapter 8, including § 4-801(7) do not apply to industrial hemp grown pursuant to a license issued under this Title or otherwise produced pursuant to federal law. Industrial hemp is an agricultural commodity that is subject to regulation under this Title.

(d) The Tribe intends to authorize the growth and handling of industrial hemp on the Reservation by Indians, as a matter of Tribal law, and to provide a sound regulatory framework to provide for the safety of industrial hemp crops and the Reservation community.

(e) For industrial hemp to become a successful economic activity on the Reservation, inter-governmental cooperation is necessary, and the Tribe is committed to moving forward with government-to-government consultation regarding the regulation of industrial hemp on the Reservation.

Chapter 2. Definitions

201. Definitions.

(a) "Acceptable hemp THC level" means a reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis with a measurement of uncertainty that produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is .35%

and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp TCH level.

(b) “Commissioner” means the Commissioner of the Standing Rock Sioux Tribe Department of Agriculture.

(c) “Certified Seed” means seed that is recognized by the Commissioner as having been certified by a recognized organization as producing industrial hemp containing no more than 0.3% THC on a dry-weight basis.

(d) “Chairman” means the Chairman of the Standing Rock Sioux Tribe.

(e) “Department” means the Standing Rock Sioux Land Management Department.

(f) “Grow” means planting, growing, cultivating, or selling industrial hemp for research or commercial purposes, including for processing.

(g) “Grower” means an Indian who grows industrial hemp.

(h) “Handle” means receiving or using industrial hemp for processing into commodities, products, or agricultural hemp seed.

(i) “Handler” means an Indian who handles or manufactures industrial hemp.

(j) “Indian” means any member of the Standing Rock Sioux Tribe, or any other federally recognized tribe.

(k) “Industrial hemp” means:

(1) The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration on a dry weight basis of not more than the acceptable hemp THC level.

(l) “Licensee” means an Indian who has been issued a license by the Commissioner pursuant to this Title.

(m) “Tribal Council” means the Standing Rock Sioux Tribal Council.

Chapter 3. Standing Rock Sioux Commissioner of Agriculture

301. Establishment.

There is established within the Department, the position of Commissioner of Agriculture.

302. Commissioner.

(a) The Commissioner shall be appointed by Tribal Council, and may be removed by the Tribal Council, with or without cause.

(b) The Commissioner shall be responsible for the administration and implementation of this Title, including:

(1) Reviewing applications and issuing licenses regarding growing and handling industrial hemp on the Reservation;

(2) Conducting (or causing to be conducted) the sampling, testing, and inspection of industrial hemp plants, fields, and industrial hemp handling facilities, including places where industrial hemp is grown, stored or handled;

(3) Conducting (or causing to be conducted) record audits of industrial hemp Licensees;

(4) Promulgating regulations and issuing forms that are subject to the approval of the Tribal Council; and

(5) Advising the Chairman and Tribal Council and making recommendations pertaining to agriculture on the Reservation, including industrial hemp growth and handling, the enforcement of this Title, and annual budgets required to accomplish the purposes of this Title.

(6) Setting an application fee for industrial hemp licenses.

Chapter 4. Authorization of Industrial Hemp under Tribal law

401. Authorization.

(a) Industrial hemp, as defined in this Title, is recognized as a lawful agricultural commodity under Tribal law, subject to the requirements of this Title. Upon meeting the requirements of this Title, as a matter of Tribal law, any Indian may grow, handle, transport, produce, or sell industrial hemp, subject to the terms of this Title.

(b) Any Indian desiring to grow, handle, transport, produce, or sell industrial hemp on the Reservation must obtain an industrial hemp license from the Commissioner and comply with the provisions of this Title. A license under this Title shall be site-specific, and shall authorize industrial hemp production only at the locations specified in the license application and approved by the Commissioner.

(c) An application for an industrial hemp license must include:

- (1) the name, address, phone number and email address of an applicant;
- (2) the name, address, phone number and email address of all individuals who will be involved in any manner in growing or handling industrial hemp;
- (3) if the applicant intends to use the services of any person or entity as a contractor for growing or handling the industrial hemp, the name, address, phone number and email address of the contractor and, if the contractor is an entity, the officers of the entity and each individual who will be involved in any capacity regarding the growing or handling of industrial hemp for the applicant;
- (4) a legal description, the global positioning system (GPS) coordinates, and a map of the land where the applicant seeks to grow or store the hemp, or both;
- (5) the acreage dedicated to the production of industrial hemp, or greenhouse or indoor space square footage dedicated to the production of industrial hemp;
- (6) proof that the applicant has the legal authority to use the fields for which the application is sought, which may be demonstrated through 1) an agricultural lease of Tribal lands, or 2) proof of ownership of a majority interest in individually owned trust land;
- (7) the name of the variety of hemp and the approved seed cultivar;
- (8) a statement of intended use, including whether the applicant intends the end use to be grain, fiber, or otherwise;
- (9) the name, address, telephone number, and email address of any person or entity who will process the industrial hemp;
- (10) written consent from each person or entity listed in response to subsections (c)(1) through (c)(3) of this section to criminal background checks, along with each such person's (i) the full name, (ii) social security number, (iii) any and all other names used and addresses resided at for the past ten (10) years for each such person, and (iv) certification by each such person that they have not been

convicted of any federal, state or Tribal felony or misdemeanor drug crime within the past 10 years; unless that person was 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, and the relevant conviction also occurred before October 31, 2019;

(11) the application fee, if imposed by the commissioner;

(12) an additional fee of \$150 for each background check under subsection (c)(10) of this section; and

(13) Standing Rock Sioux Tribe Business License Fee \$100.

(d) Fees collected by the Commissioner shall be used for the administration and enforcement of this title, and all funds derived from fees under this Title shall be maintained in accounts separate and apart from all other Tribal accounts.

Chapter 5. Licensing

501. Licensing.

(a) Upon receipt of an application to grow or handle industrial hemp, the Commissioner shall cause to be conducted a criminal background investigation regarding federal, state and tribal convictions with respect to each person for whom a criminal background investigation is required.

(b) Once the Commissioner receives the results of the background investigation(s), the Commissioner shall process the application. The Commissioner shall determine whether the applicant has demonstrated that the applicant intends and is capable of growing or handling industrial hemp and to ensure its safe production, consistent with the requirements of this Title.

(c) No application shall be granted if an applicant, or any person listed in response to section 401(c)(1)-(c)(3) of this Title has been convicted of a state, federal, or tribal felony or drug-related misdemeanor within the last 10 years, unless that applicant or person was 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, and the relevant conviction also occurred before October 31, 2019.

(d) No application shall be granted if the application is incomplete, if an applicant has submitted any false or misleading statement on the application, or if the applicant has failed to demonstrate to the satisfaction of the Commissioner that he or she will

adequately comply with the provisions of this Title and ensure the integrity of the hemp crop at all times.

(e) If an application meets the requirements of this Title, the Commissioner shall grant a license to the applicant. The granting of a license under this Title provides authorization to grow or handle industrial hemp as a matter of Tribal law. Any license granted under this Title shall state on its face that “This license is granted under Tribal law, and the granting of this license is not intended as a guarantee regarding the potential application or enforcement of federal or state laws with respect to the licensee or any person doing business with the licensee. The licensee remains fully responsible for compliance with any federal or state laws regarding industrial hemp to the extent those laws are applicable, and the Tribe shall not be responsible for any non-compliance by the licensee or others with respect to such other laws.”

(f) Licenses may not be transferred to any other person.

(g) Licenses are valid for the calendar year in which they are issued. Licenses expire on December 31 of each year.

(h) Licenses may be renewed by annually by paying a \$250 renewal fee, provided that all information provided on the original application must be updated for any license renewal, and the renewal request must meet all the requirements of this Title.

Chapter 6. Continuing Obligations of Licensees

601. Record-Keeping and Reporting.

(a) Licensed growers shall keep records of the following: (1) name and address of supplier of certified seed; (2) the amount of seed received; and (3) the date the seed was received. All Licensees must also keep records of all production of industrial hemp and of all test results, including those provided for in section 602 of this Title, as well as any other test results regarding tests performed on the Licensee’s behalf. All records shall be maintained by Licensees for at least three (3) years, and shall be maintained at the Licensee’s principal place of business on the Reservation.

(b) Licensees must immediately notify the Commissioner of any loss or theft of industrial hemp or industrial hemp seed.

(c) Within ten (10) days, Licensees must notify the Commissioner of a change in address of the Licensee.

(d) Licensed growers must notify the Commissioner of an intent to change the location of the land area on which the Licensee conducts industrial hemp cultivation, storage or both,

by submitting an updated legal description, GPS coordinates, and map specifying the proposed alteration. Upon receipt of the notice of intent to alter the land area, the Commissioner shall notify the Licensee whether it may cultivate or store industrial hemp on the altered land area.

(e) Licensed growers must notify the Commissioner of an intent to change the variety of certified seed being grown, by submitting to the Commissioner the name of the new certified seed to be grown. Upon receipt of the notice of the new certified seed to be grown, the Commissioner shall notify the Licensee whether it may cultivate the new certified seed.

(f) Within fifteen (15) days of an intended harvest, licensed growers must notify the Commissioner of the harvest date to provide the Department with time to cause test samples to be taken prior to harvest.

(g) Upon harvesting, growers shall keep the following records:

- (1) Name and address of the buyer;
- (2) Description of the industrial hemp product, including the amount (weight) delivered;
- (3) Official test report records for THC content of the hemp.

(h) When receiving industrial hemp, licensed handlers shall keep the following records:

- (1) Name and address of the supplier(s);
- (2) Amount (weight) of the industrial hemp received; and
- (3) Official test report records for THC content of the hemp.

(i) The Commissioner shall be authorized to undertake (or cause to be undertaken) an audit of records required to be maintained by a Licensee under this Title, upon three (3) days' notice to the Licensee.

602. Access and Testing.

(a) All industrial hemp grown on the Reservation shall be subject to testing for THC levels. Industrial hemp crops may not be harvested prior to samples being taken. The Commissioner shall establish criteria for the certification of independent testing laboratories and the testing standards and procedures to be used, any such standards and procedures shall use post-decarboxylation or other similarly reliable methods.

(b) Every Licensee under this Title shall submit plant samples chosen by the Commissioner (or his designee) to an independent testing facility, certified by the Commissioner for the testing of THC levels. The sampling shall be undertaken in such manner, and at such times, as may be designated by the Commissioner, but at least annually. Each separate, non-contiguous field that is controlled by a Licensee shall be separately tested. The Commissioner or his designees shall be authorized to enter industrial hemp fields or handling facilities in order to inspect and take a representative sample of the crop without notice at any time, including during the growing, harvesting, and processing phases. Licensees are responsible for paying the cost of each test conducted. The initial fee for a test shall be \$350 per test, provided that the Commissioner shall be authorized, after an initial year, to determine the appropriate cost for testing.

(c) The Commissioner shall provide a copy of the test results to the Licensee.

(d) If test results show that a representative sample contains more than the acceptable hemp THC level, the Commissioner shall cause the industrial hemp crop to be destroyed.

(e) In addition to plant testing, every product intended to be sold in the stream of commerce for human or animal consumption shall be tested for quality and labeled, with regard to levels of THC.

Chapter 7. Violations, Sanctions for Noncompliance

701. Violations; Penalties

(a) Except as authorized by this Title, it is unlawful for any person to cultivate, grow, handle, manufacture, distribute, or possess with the intent to cultivate, grow, handle, manufacture, or distribute, industrial hemp.

(b) The Commissioner shall establish rules and regulations providing for the correction of negligent violations of this Title through a corrective action plan, and shall conduct inspection to determine if the corrective action plan has been implemented.

(c) Any person who commits three negligent violations of this Title in a five-year period shall be ineligible to receive a license or grow, handle, transport, produce, or sell industrial hemp under this Title for a period of 5 years beginning on the date of the third violation.

(d) “Negligent violation of this Title” means:

- (1) Failure to provide a legal description of the land on which a producer produces hemp;

- (2) Failure to obtain a license or other required authorization under this Title;
- (3) Production of cannabis with a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis exceeding the acceptable hemp THC level but not more than 0.5 percent on a dry weight basis.
- (4) Any other violation of this Title with a culpable mental state of negligence.

(e) Violation of this Title with a culpable mental state greater than negligence shall be a Class B misdemeanor, provided that a second or subsequent violation shall be a Class A misdemeanor.

(f) If the Commissioner determines that any person has violated this Title with a culpable mental state greater than negligence, the Commissioner shall immediately report the person to the U.S. Attorney General and the chief law enforcement officer of the Standing Rock Sioux Tribe.

(g) In addition to the penalties provided for in subsections (b)-(e) of this section, the Commissioner may deny, revoke, or suspend a license if the applicant or Licensee:

(5) violates any provision of this Title;

(6) engages in fraud or deception when applying for a license or submits false information on a license application; or

(7) fails to cooperate with the Commissioner or any Department official seeking to conduct an inspection or investigation, obtain a representative sample, or audit records pursuant to this Title.

(h) The Commissioner may impose a civil fine of no more than \$2,500 per violation upon any person, or entity that violates this Title.

(i) Absent an emergency that may threaten the health or safety of persons on the Reservation, the Commissioner shall not suspend or revoke a license or impose a fine against any person alleged to have violated this Title until the Commissioner has notified the person of the basis for the Commissioner's action and has given the person an opportunity for a hearing before the Commissioner. The hearing shall be upon at least ten (10) days' notice, unless an emergency requires that the hearing be held sooner. At the hearing, the person alleged to have violated this Title shall have a right to be present, to review the adverse evidence, to present documentary or oral evidence, to cross-examine other witnesses, and to be represented by counsel at the person's own expense.

(j) The Commissioner shall cause any hemp grown or products produced in violation of this Title to be destroyed.

(1) The cost of disposal and clean-up shall be levied against any person or entity that violates this Title and shall be in addition to any civil fine that may be imposed.