

ONEIDA NATION
PUBLIC COMMENT PERIOD NOTICE
Due to the COVID-19 Public Health Emergency
Only Written Comments Will Be Accepted Until:
THURSDAY JULY 9, 2020

Find Public Meeting Materials at
[Oneida-nsn.gov/government/register/public-meetings](https://oneida-nsn.gov/government/register/public-meetings)



Send Public Comments to
LOC@oneidanation.org
Ask Questions here
LOC@oneidanation.org

INDUSTRIAL HEMP LAW

The purpose of the Industrial Hemp law is to authorize the production of hemp within the Reservation of the Oneida Nation and to exercise the Nation's inherent sovereignty by granting the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation.

The Industrial Hemp law will set forth criteria that all persons and business entities under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to:

1. Mandatory licensing and the process for licensure;
2. A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;
3. Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;
4. Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;
5. Reporting requirements for the Nation to track hemp production within the Reservation and ensure that hemp is being produced in accordance with the Industrial Hemp law; and
6. Enforcement mechanisms for the Nation to detect and respond to noncompliance with the Industrial Hemp law.

PUBLIC COMMENT PERIOD CLOSING THURSDAY, JULY 9, 2020

The Nation's COVID-19 Core Decision Making Team issued a declaration on March 27, 2020, titled "*Suspension of Public Meetings under the Legislative Procedures Act.*" This declaration provides that the Legislative Procedures Act's requirement to hold a public meeting during the public comment period is suspended due to the COVID-19 Public Health State of Emergency. Although there will be no public meeting, the public comment period will still occur, and individuals can participate in the legislative process by submitting written comments, questions, or other input via e-mail to LOC@oneidanation.org.



INDUSTRIAL HEMP LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	To authorize hemp production within the boundaries of the Reservation and to grant the Oneida Nation primary regulatory authority over hemp production by setting forth criteria that all persons under the jurisdiction of the Nation who wish to participate in the production of hemp must follow, including, but not limited to: <ul style="list-style-type: none">▪ Mandatory licensing and the process for licensure;▪ A definition of what constitutes an acceptable hemp THC level for the processing and distribution of hemp plants;▪ Sampling and testing requirements to accurately determine whether a hemp crop exceeds the acceptable hemp THC level;▪ Requirements for the destruction and reporting of hemp crops that exceed the acceptable hemp THC level;▪ Reporting requirements for the Nation to track hemp production within the Reservation and ensure that hemp is being produced in accordance with the Law; and▪ Enforcement mechanisms for the Nation to detect and respond to non-compliance with the Law.
Purpose	<ul style="list-style-type: none">• To authorize the production of hemp within the Reservation of the Oneida Nation [5 O.C. 508.1-1(a)];• To grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation [5 O.C. 508.1-1(b)];• To assert the Nation's inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation's, as well as the federal, law [5 O.C. 508.1-1(c)]; and• To promote the Nation's hemp industry to the maximum extent permitted by law [5 O.C. 508.1-1(d)].
Affected Entities	Any person under the jurisdiction of the Nation who wishes to produce hemp; the Environmental, Health, Safety and Land Division; the Oneida Police Department; and the Nation's Judiciary.
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure.
Public Meeting	A public comment period will be held open until July 9, 2020. A public meeting will not be held in accordance with the Nation's COVID-19 Core Decision Making Team's declaration titled, "Suspension of Public Meetings under the Legislative Procedures Act."
Fiscal Impact	A fiscal impact statement has not yet been requested.

SECTION 2. INDUSTRIAL HEMP

- A. Industrial hemp ("hemp") is a highly versatile crop that belongs to the cannabis sativa plant species.¹
- There are three main parts of the hemp plant that are harvested to produce over 25,000 products today:
- Stalk – the stalk is harvested for its fiber, which can be used to make such products as rope, textiles, yarn, paper, construction materials, plastics and car parts;

¹ Ryan LeCloux, "Regulating Wisconsin's Hemp Industry," *Wisconsin Policy Project*, vol. 2, no. 9 (August 2019).

- Seeds – the seeds are harvested for use in such products as cooking oil, dietary supplements, hygienic products (e.g. shampoo and lotion) and medicinal/pharmaceutical products; and
- Hemp Flower – the hemp flower is harvested for cannabidiol (“CBD”), which is a non-psychoactive chemical compound that has been purported to possess medicinal and therapeutic benefits.²

B. *Industrial Hemp v. Marijuana.* Like hemp, marijuana belongs to the cannabis sativa plant species, and thus, botanically, the two plants are the same.³ Legally, however, the plants vary based on the level of delta-9 tetrahydrocannabinol (“THC”) they contain. THC is the chemical in cannabis that provides the psychoactive effect and hemp has a significantly lower THC concentration level (typically, less than one (1) percent) when compared to marijuana, which has an average THC concentration between ten (10) percent and thirty (30) percent.⁴

- A THC concentration of around one (1) percent is the generally accepted threshold for the plant to have a psychoactive effect that people associate with the “high” sensation.⁵
- Under federal law, hemp is defined as having a THC concentration of not more than 0.3 percent on a dry weight basis, which is the same definition that the Nation has used in this Law to produce hemp in accordance with the 2018 Federal Farm Bill.⁶

SECTION 3. HISTORY OF INDUSTRIAL HEMP (PRE-1970’S)

A. *Hemp Production in the United States.* The United States “has a rich history of growing hemp for industrial and agricultural purposes, dating back to the colonial period.”⁷ Hemp was brought to the American colonies in 1645 as a source of fiber to make cloth, paper, canvas and rope.⁸ It was a significant in producing the ropes and canvas necessary for ships.⁹

In 1937, however, the federal government passed the Marijuana Tax Act, which taxed all forms of marijuana, including hemp, and put in place restrictions that made it significantly more difficult to grow hemp.¹⁰ The restrictions were briefly loosened during WWII due to a shortage of imported fibers and an increased domestic demand for fibers that resulted from the war.¹¹ In response, the federal government created a program called “Hemp for Victory” to promote the production of hemp in the United States.¹² Hemp fiber became pivotal in producing much needed war materials, such as thread for shoes, as well as rope and other materials for building ships and calking vessels.¹³

After the war, U.S. hemp production declined significantly when the federal government resumed the strict regulations that it put in place through enactment of the Marijuana Tax Act. Then, in 1970, the

² *Id.*

³ *Id.*

⁴ *Id.* (citing Renee Johnson, “Hemp as and Agricultural Commodity,” *Congressional Research Service* (June 22, 2018)).

⁵ *Id.* (citing Renee Johnson, “Defining Hemp: A Fact Sheet,” *Congressional Research Service* (March 22, 2019)).

⁶ 7 U.S.C. s. 5940(a)(2).

⁷ Ryan LeCloux, “Regulating Wisconsin’s Hemp Industry,” *Wisconsin Policy Project*, vol. 2, no. 9 (August 2019).

⁸ *Id.* (citing Economic Research Service, “Industrial Hemp in the United States: Status and Market Potential,” *U.S. Department of Agriculture* (January 2000)).

⁹ *Id.* (citing Carey Reed, “8 Things You Didn’t Know about Hemp,” *PBS NewsHour* (October 17, 2015)).

¹⁰ *Id.* (citing Gerald J. McKenna, “The current Status of Medical Marijuana in the United States,” *Hawaii Journal of Medicine & Public Health* 73, no. 4 (April 2014)).

¹¹ *Id.* (citing Carey Reed, “8 Things You Didn’t Know about Hemp,” *PBS NewsHour* (October 17, 2015)).

¹² *Id.* (citing Deb Kozel, “Industrial Hemp Update,” *Iowa Legislative Services Agency* (February 1, 2019)).

¹³ *Id.* (citing Albert Hazen Wright, “Wisconsin’s Hemp Industry,” *Wisconsin Bulletin* 293, *Madison: Agricultural Experiment Station of the University of Wisconsin* (1918)).

hemp industry was outlawed entirely when the federal government passed the Controlled Substances Act, identifying marijuana, which included hemp, as a Schedule I drug.

B. *Hemp Production in the State of Wisconsin.* The State of Wisconsin harvested its first hemp crop in 1908.¹⁴ Wisconsin proved well-suited for the hemp cultivation due to its humid and temperate climate, as well as its fertile soil.¹⁵ In 1917, a scientist in Madison, Wisconsin invented a machine that could harvest and process hemp more efficiently.¹⁶ Soon thereafter, hemp mills were built to process hemp stalks into fiber, making Wisconsin the nation's hemp fiber hub and, by 1920, the country's top producer of hemp.¹⁷ Wisconsin remained the country's top producer of hemp until the 1950's.¹⁸

SECTION 4. HISTORY OF INDUSTRIAL HEMP (POST 1970'S TO THE PRESENT)

A. *2014 Farm Bill.* In 2014, Congress passed the Agricultural Act of 2014, also known as the 2014 Farm Bill, legalizing the production of hemp for the first time since 1970.¹⁹ The 2014 Farm Bill allowed states to create agricultural pilot programs to study the growth, cultivation and marketing of industrial hemp. However, it did not change hemp's classification as a Schedule I drug, and thus, hemp remained illegal for all other purposes, meaning:

- Hemp products could be sold only for purposes of marketing research;
- Hemp products could not be sold in states that did not have hemp pilot programs;
- Hemp seeds and plants could not be transported over state lines;
- Individuals had to be registered with the U.S. Drug Enforcement Agency to import viable cannabis seeds; and
- Rules for controlled substances still applied to products containing hemp, which meant they couldn't be manufactured or distributed without U.S. Food and Drug Administration's approval.

In 2017, the State of Wisconsin established a hemp pilot program in accordance with the 2014 Farm Bill, officially launching its program in time for the 2018 growing season.²⁰ The state's pilot program required state licensure for participants of the program, registration fees, a research plan through a university or state department of agriculture, background checks, testing of crops for acceptable THC levels and other regulatory provisions.²¹

The 2014 Farm Bill did not designate Indian tribes as "states" for the purpose of producing industrial hemp under their own pilot programs. Therefore, tribes desiring to participate in a pilot program had to do so by obtaining a license through the department delegated authority by the state to administer its pilot program.²² In Wisconsin, that department was the Department of Agriculture, Trade and Consumer Protection ("DATCP").

The Oneida Nation participated in the Wisconsin Hemp Pilot Research Project in 2019 by obtaining a license through DATCP. The major project components included licensure, registration fees, reporting, recordkeeping, inspections, testing, and destruction requirements for plants that exceeded a THC

¹⁴ *Id.*

¹⁵ *Id.* (citing Jerry Apps, "Wisconsin Agriculture: A History," *Wisconsin Historical Society Press* (2015)).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Agricultural Act of 2014, Pub. L. 113-79, section 7606.

²⁰ 2017 WI Act 100.

²¹ *Id.*

²² USDA Clarifies Industrial Hemp Production for Indian Tribes. USDA: Agricultural Marketing Service. ams.usda.gov. March 2020.

concentration level of 0.3 percent.²³ The Nation’s goals for participating in the program were to learn about different hemp varieties, various end-use products, growth characteristics, labor requirements, post-harvest processing, and marketability.

B. 2018 Farm Bill. In 2018, Congress enacted the 2018 Farm Bill, which made substantial changes to the way the federal government regulated hemp under the 2014 Farm Bill.²⁴ Most significantly, it removed hemp from the controlled substances list and granted Indian tribes regulatory authority over hemp production within its jurisdiction.²⁵ Under the 2018 Farm Bill:

- Hemp is defined as 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 THC concentration of not more than 0.3 percent on a dry weight basis;
- The United States Department of Agriculture (“USDA”) is required to establish a permanent federal hemp program that would act to phase out state pilot programs created under the 2014 Farm Bill by terminating them one (1) year after the USDA releases regulations to govern hemp production under 2018 Farm Bill’s federal program;
- Tribes and states are authorized to establish their own hemp production programs in lieu of the USDA’s program so long as they submit a plan for approval to the USDA that includes the specific requirements set forth in the 2018 Farm Bill, as well as USDA regulations promulgated in accordance therewith; and
- Tribes and states are not allowed to prohibit the transportation of hemp or hemp products across their boundary lines even if they do not have a hemp program.²⁶

C. The Proposed Legislation. It the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

- This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.
- The proposed legislation will create a framework and a licensing program for the Oneida Nation to regulate hemp and hemp growers on the Oneida Reservation, which will be submitted to the USDA for approval in accordance with the 2018 Farm Bill.

SECTION 5. CONSULTATION AND OUTREACH

A. Hemp Team. In 2018, the Oneida Business Committee adopted resolution BC-04-25-18-J, which supported the Nation’s participation in Wisconsin’s Industrial Hemp Pilot Program and ultimately created the Nation’s hemp team that is composed of members from the following areas within the Oneida Nation:

- The Community & Economic Development Division;
- The Environmental, Health, Safety and Land Division (“EHSLD”);
- The Environmental Resources Board; and
- The Community Development Planning Committee (“CDPC”).

The LRO, as well as members of the LOC, met often with the Hemp Team and relied on their experience and expertise when drafting the proposed legislation.

²³ Hemp Pilot Research Program. WI. Department of Agriculture, Trade, and Consumer Protection. Datcp.wi.gov/Pages/ProgramsServices/Hemp. March 2020

²⁴ Agricultural Improvement Act of 2018, Pub. L. 115-334, section 11106.

²⁵ *Id.*

²⁶ *Id.*

B. Outside Resources.

- The LRO staff attorney, as well as members of the LOC, participated in several conference calls with the USDA and attended various USDA sponsored trainings to stay up to date on the most current regulatory information regarding the 2018 Farm Bill and the USDA regulations promulgated thereunder.
- The LRO staff attorney, as well as members of the LOC, attended two (2) meetings held by the Wisconsin Tribal Conservation Advisory Council (“WTCAC”) to learn more about hemp and the strategies/practices of other tribes pursuing legislation and regulatory programs under the 2018 Farm Bill.

SECTION 6. PROCESS

A. Thus far, the development of this Law has followed the process set forth in the Legislative Procedures Act (“LPA”).

B. This legislation was carried over from the 2014-2017 term and placed onto the Active Files List again on September 6, 2017 for the 2017-2020 term.

C. The following work meetings were held regarding the development of this Law and legislative analysis:

- August 1, 2018: Work meeting with LOC.
- August 28, 2018: Work meeting with CDPC.
- October 25, 2018: Work meeting with LOC.
- December 5, 2018: Work meeting with LOC.
- February 5, 2019: Work meeting with Hemp Team.
- April 11, 2019: Work meeting with LOC.
- July 2, 2019: Work meeting with Hemp Team.
- July 9, 2019: Work meeting with Hemp Team.
- July 15, 2019: Work meeting with LOC.
- September 11, 2019: Work meeting with Hemp Team.
- October 24, 2019: Work meeting with Hemp Team.
- November 14, 2019: Work meeting with Hemp Team.
- December 23, 2019: Work meeting with Hemp Team.
- January 30, 2020: Work meeting with LOC.
- February 14, 2020: Work meeting with Hemp Team.
- February 21, 2020: Work meeting with Hemp Team.
- March 12, 2020: Work meeting with Hemp Team.
- April 8, 2020: Work meeting with LOC.
- April 15, 2020: Work meeting with LOC.
- April 16, 2020: Work meeting with LOC.
- April 23, 2020: Work meeting with LOC.
- April 28, 2020: Work meeting with LOC.
- May 7, 2020: Work meeting with LOC.
- May 15, 2020: Work meeting with LOC.

D. COVID-19 Pandemic’s Effect on the Legislative Process. A public meeting for the proposed Law will not be held due to the COVID-19 pandemic.

- On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

- On March 24, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Safer at Home*” declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. This declaration prohibits all public gatherings of any number of people.
- Then on March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.
- On March 28, 2020, the Oneida Business Committee adopted resolution BC-03-28-20-A titled, “*Extension of March 12th Declaration of Public Health State of Emergency*” which extended the Nation’s Public Health State of Emergency declaration until May 12, 2020.
- On April 21, 2020, the COVID-19 Core Decision Making Team issued an “*Updated Safer at Home*” declaration which allowed for gaming and golf operations to resume.
- On May 6, 2020, the Oneida Business Committee adopted resolution BC-05-06-20-A titled, “*Extension of Declaration of Public Health State of Emergency Until June 11, 2020*” which further extended the Nation’s Public Health State of Emergency until June 11, 2020.
- On May 19, 2020, the COVID-19 Core Decision Making Team issued a “*Safer at Home Declaration, Amendment, Open for Business*” which directs that individuals within the Oneida Reservation should continue to stay at home, businesses can re-open under certain safer business practices, and social distancing should be practiced by all persons.
- On June 10, 2020, the Oneida Business Committee adopted resolution BC-06-10-20-A titled, “*Extension of Declaration of Public Health State of Emergency Until July 12, 2020*” which further extended the Nation’s Public Health State of Emergency until July 12, 2020.
- Although a public meeting will not be held on the proposed Industrial Hemp law, a public comment period will still be scheduled and held open in accordance with the Legislative Procedures Act and the COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration.

SECTION 7. CONTENTS OF THE LEGISLATION

- A. **Application.** This Law regulates the production of hemp within the boundaries of the Oneida Nation and applies to all persons under the jurisdiction of the Nation that intend to engage, whether directly or indirectly, in the production of hemp. [5 O.C. 508.4-1].
- The Law provides that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation. [5 O.C. 508.4-1].
- B. **Effectiveness.** Per the requirements of the 2018 Farm Bill and USDA regulations created thereunder, this Law shall not become effective until approved by the USDA. [5 O.C. 508.4-1].
- Before the legislation is submitted to the USDA for approval, the 2018 Farm Bill further requires that the Oneida Business Committee certify in writing that the Nation is capable and prepared to implement the Law immediately upon said approval.
- C. **Compliance.** All hemp produced within the jurisdiction of the Nation must meet the requirements of this Law and any applicable portions of the 2018 Farm Bill, which includes the USDA regulations promulgated in accordance therewith. [5 O.C. 508.4-2]. Such compliance includes, but is not limited to:
- That persons intending to produce hemp or participate in the production of hemp may only do so upon receipt of a valid license from EHSLD. [5 O.C. 508.6].

- 218 ▪ The license application process requires that persons:
 - 219 ○ Fill out the application form created by EHSLD;
 - 220 ○ Provide proof of ownership of the land and/or property where hemp will be
 - 221 produced; or proof of permission to use another’s property for purposes of the
 - 222 same;
 - 223 ○ Provide EHSLD with a description of the intended use of the hemp crop, the
 - 224 intended method of cultivation and whether the applicant intends to use any
 - 225 pesticides, herbicides or other potentially hazardous materials during the
 - 226 cultivation process;
 - 227 ○ Acknowledge, through execution of the application, that they are agreeing to abide
 - 228 by all rules and regulations governing the Nation’s plan and certifying that the
 - 229 information they provided in and submitted with the application is accurate and
 - 230 truthful;
 - 231 - The Law provides that applicants found to have materially falsified any
 - 232 information provided in or along with their application shall be deemed
 - 233 ineligible for licensure. [5 O.C. 508.6-3].
 - 234 ○ Provide a criminal history report through the U.S. Federal Bureau of Investigations
 - 235 that was completed no greater than sixty (60) days before the application
 - 236 submission date;
 - 237 - The Law provides that applicants with a state or felony conviction relating
 - 238 to a controlled substance will be deemed ineligible to receive a license for
 - 239 a period of ten (10) years from the date of their conviction unless the
 - 240 applicant had been lawfully producing hemp under the 2014 Farm Bill
 - 241 before December 20, 2018 and had been convicted before that date. [5
 - 242 O.C. 508.6-3].
 - 243 ○ Pay the licensing fee set pursuant to the fee schedule that was created by EHSLD
 - 244 and approved by the Oneida Business Committee through resolution; and
 - 245 ○ Provide any further information, disclosure or consent that EHSLD requires under
 - 246 a standard operating procedure. [5 O.C. 508.6-2].
- 247 • That, once licensed, steps are taken to ensure hemp crops do not exceed the acceptable hemp
- 248 THC level, which the Law defines as “when the application of the measurement of uncertainty
- 249 (MU) to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight
- 250 basis produces a distribution or range of not more than 0.3%.” [5 O.C. 508.3-1]. Such steps
- 251 include, but are not limited to:
 - 252 ▪ From EHSLD:
 - 253 ○ That it provides prospective applicants with information necessary to produce
 - 254 hemp in compliance with the Law [5 O.C. 508.5];
 - 255 ○ That it collects and maintains, for at least seven (7) years, specific information on
 - 256 each license it issues, including:
 - 257 - The producer’s contact information;
 - 258 - The locations of the producer’s growing sites; and
 - 259 - Information relating to the producer’s acreage; crop sampling, testing and
 - 260 results; and destruction of non-compliant plants [5 O.C. 508.7-1].
 - 261 ○ That it conducts inspections and investigates complaints [5 O.C. 508.5];
 - 262 ○ That it samples and tests hemp crops pursuant to the protocol set forth in the Law
 - 263 to determine whether they exceed the acceptable THC concentration level and, if
 - 264 they do, that it destroys the non-compliant plants in accordance with the 2018 Farm
 - 265 Bill [5 O.C. 508.8]; and
 - 266 - The Law provides that EHSLD may collect samples, facilitate testing and
 - 267 oversee destruction of non-compliant plants using representatives of the

Nation (so long as they are not the actual producers) or by outsourcing to an appropriate individual or entity of EHSLD's choosing [5 O.C. 508.8].

- The sampling, testing and destruction protocols set forth in the Law are per the requirements of the 2018 Farm Bill and USDA regulations promulgated thereunder. However, the Law carves out flexibility for the Nation to use alternative protocols at such time that the federal guidelines allow for it [5 O.C. 508.8].

- o That it enforces the Law through appropriate means, including the issuance of corrective actions and mandatory reporting to the USDA for non-compliance that has a culpable mental state greater than negligence [5 O.C. 508.7-1].

- *From Producers (License Holders):*

- o That they maintain, as well as share, information in accordance with the EHSLD's standard operating procedure for a period of at least seven (7) years and that they retain such information in a manner that can be easily accessible upon request of EHSLD [5 O.C. 508.7-2];
- o That they grant EHSLD or designees of EHSLD complete access to their growing sites to conduct inspections, sampling and, if necessary, destruction of non-compliant plants [5 O.C. 508.7-2];
- o That, upon issuance of a license, they report their hemp crop acreage report to the Farm Service Agency using the requisite forms and send copies to EHSLD [5 O.C. 508.7-2];
- o That they report any changes in their status to EHSLD, including any recent felony convictions related to a controlled substance or a violent crime, within the time period set forth within the Law so that EHSLD can respond appropriately [5 O.C. 508.7-2]; and
- o That they comply with any EHSLD corrective action plan that was issued for non-compliance [5 O.C. 508.11].

D. Sampling, Testing and Destruction. The 2018 Farm Bill and accompanying USDA regulations set forth specific protocols that must be followed for collecting samples of each hemp crop, for testing those samples and, if a sample tests above the acceptable THC concentration level, for destroying the entire crop associated with that sample. To ensure compliance with the 2018 Farm Bill and accompanying USDA regulations, this Law has adopted these protocols in their entirety, but carved out flexibility for the Nation to adopt different protocols in the event the federal government decides to loosen some of its current sampling, testing and destruction requirements. [5 O.C. 508.8-1].

E. Enforcement and Appeals.

- *Violations.* The Law provides that violators of the Law shall not, as a result of the violation, be subject to any criminal enforcement action by the Tribal, Federal, State or local government. [5 O.C. 508.11]. It then divides violations into the following two (2) categories:
 - Negligent violations, which include, but are not limited to:
 - o A failure to provide a legal description of land on which the producer produces hemp;
 - o A failure to obtain a license from EHSLD to produce hemp;
 - o The production of hemp with a concentration exceeding the acceptable hemp THC level.
 - The Law affords some flexibility with respect to hemp that is produced with a THC concentration in excess of 0.3 percent, but not more than 0.5 percent, in that it does not consider this to be a negligent violation so long as the producer made reasonable efforts to grow hemp, but still requires that the crop be destroyed.

- 317 ▪ Violations made with a culpable mental state greater than negligence, which the Law
318 defines as acting intentionally, knowingly, willfully, or recklessly. [5 O.C. 508.11].
- 319 • *Enforcement.*
- 320 ▪ If EHSLD finds that a negligent violation occurred, the Law requires it to establish a
321 corrective action plan that includes, at a minimum:
 - 322 ○ A plan to correct the violation;
 - 323 ○ A reasonable date by which producers shall correct the negligent violation; and
 - 324 ○ A requirement that producers periodically report to EHSLD on their compliance
325 with the Nation’s plan for a period of not less than the next two (2) years from the
326 date of the negligent violation.
- 327 - Producers found to have negligently violated this Law three (3) times
328 within a five (5) year period shall be ineligible to produce hemp for a
329 period of at least five (5) years from the date of the third violation. [5 O.C.
330 508.11].
- 331 ▪ If EHSLD determines that a producer violation was committed with a culpable mental state
332 greater than negligence, the Law requires that it immediately report the producer to the
333 U.S. Attorney General, USDA and the Nation’s chief law enforcement officer or chief law
334 enforcement officer of the State charged with receiving such information. [5 O.C. 508.11].
- 335 • *Appeals.* The Law allows for appeals of decisions of EHSLD to be filed with the Judiciary in
336 accordance with the Nation’s governing laws. [5 O.C. 508.12].
- 337

338 **SECTION 8. OTHER CONSIDERATIONS**

- 339 A. *Certification by Oneida Business Committee.* Under the 2018 Farm Bill and accompanying USDA
340 regulations, in the event the OBC decides to adopt this Law, it will have to include a certification to the
341 USDA that it is ready and capable of implementing the Law as soon as approved by the USDA.
- 342 B. *Fiscal Impact.* A fiscal impact statement has not yet been requested.
 - 343 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
344 emergency legislation. [Legislative Procedures Act 1 O.C. 109.6-1].
 - 345 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
346 Committee and may be prepared by any agency who may receive funding if the legislation is
347 enacted; who may administer a program if the legislation is enacted; who may have financial
348 information concerning the subject matter of the legislation; or by the Finance Office, upon request
349 of the Legislative Operating Committee. [Legislative Procedures Act 1 O.C. 109.6-1(a) and (b)].

Title 5. Business - Chapter 508*[Oneida Language]**[Oneida Translation]***INDUSTRIAL HEMP**

508.1. Purpose and Policy
 508.2. Adoption, Amendment, Repeal
 508.3. Definitions
 508.4. Application
 508.5. Authority
 508.6. Licensing Requirements

508.7. Required Recordkeeping and Reporting
 508.8. Sampling and Testing
 508.9. Destruction of Noncompliant Plants
 508.10. Compliance
 508.11. Enforcement
 508.12. Appeals

508.1. Purpose and Policy

508.1-1. *Purpose.* The purpose of this law is to:

- (a) Authorize the production of hemp within Reservation of the Oneida Nation;
- (b) Grant the Oneida Nation primary regulatory authority over the production of hemp within the jurisdiction of the Nation;
- (c) Assert the Nation’s inherent sovereign authority by creating a hemp production plan that regulates hemp as an agricultural commodity consistent with the Nation’s, as well as the federal, laws; and
- (d) Promote the Nation’s hemp industry to the maximum extent permitted by law.

508.1-2. *Policy.* The Agricultural Improvement Act of 2018, commonly referred to as the 2018 Farm Bill, provides an opportunity for Indian Nations to engage in hemp production through the submission of a hemp production plan for approval to the United States Department of Agriculture. The Farm Bill recognizes that Indian Nations, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. It is the policy of the Nation to exercise its inherent sovereign authority through self-governance. It is further the policy of the Nation to protect the health, security and general welfare of the community. The Nation finds that hemp is a valuable agricultural crop and commodity and that through proper regulation, hemp can be put to its highest and best use, thereby providing jobs and revenue for essential governmental programs and services that will benefit the Nation and its members.

508.2. Adoption, Amendment, Repeal

508.2-1. This law was adopted by Oneida Business Committee by resolution BC-____-____-____.

508.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

508.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

508.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

508.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

508.3. Definitions

508.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Acceptable hemp THC level” means when the application of the measurement of uncertainty (“MU”) to the reported delta-9 tetrahydrocannabinol content concentration

level on a dry weight basis produces a distribution or range of not more than 0.3 percent.

(b) “Applicant” means a person who applies to the Nation for a license to participate in the Nation’s hemp production plan established by this law.

(c) “Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species and refers to any form of the plant whereby the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

(d) “Controlled Substances Act” means the act, codified in 21 U.S.C. 801, *et seq.*, establishing the U.S. federal drug policy for regulating the manufacture, importation, exportation, possession, use and distribution of certain substances.

(e) “Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned or expunged.

(f) “Corrective action plan” means a plan established by the Division for a producer to correct a negligent violation or other form of non-compliance with the Nation’s hemp production plan and/or this law.

(g) “Criminal History Report” means the U.S. Federal Bureau of Investigation’s Identity History Summary.

(h) “Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully or recklessly.

(i) “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.

(j) “Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.

(k) “Delta-9 tetrahydrocannabinol, delta-9-THC or THC” means the primary psychoactive component of cannabis. For purposes of the Nation’s plan, delta-9-THC and THC are interchangeable.

(l) “Division” means the Oneida Environmental, Health, Safety and Land Division.

(m) “Drug Enforcement Administration or DEA” means the federal law enforcement agency under the U.S. Department of Justice that is the lead agency for domestic enforcement of the Controlled Substances Act.

(n) “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.

(o) “Expunged” means when a conviction is removed from an individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions.

(p) “Farm Bill” means the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490, as may be amended from time-to-time hereafter, along

with the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture on October 29, 2019 and as may be finalized and further amended from time-to-time hereafter.

(q) “Farm Service Agency or FSA” means the USDA agency charged with assisting in information collection on land being used for hemp production.

(r) “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.

(s) “Geospatial location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

(t) “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 and, where cannabis plants exceed the acceptable hemp THC level, shall also mean to dispose of those plants.

(u) “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 delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(v) “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.

(w) “Information sharing system” means the database mandated under the Farm Bill which allows USDA to share information collected under tribal, state and USDA plans with tribal, federal, state, and local law enforcement.

(x) “Key participant” means a sole proprietor, partner in a partnership, or person with executive managerial control in a corporation such as a chief executive officer, chief operating officer and chief financial officer, but not non-executive managers such as farm, field or shift managers.

(y) “Law enforcement agency” means any tribal, federal, state or local law enforcement agency.

(z) “Lot” means a contiguous area in a field, greenhouse or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(aa) “Marijuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

(bb) “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.

(cc) “Nation” means the Oneida Nation.

(dd) “Nation’s plan” means the criteria and regulations set forth in this law to govern the production of hemp within the jurisdiction of Nation and serves as the “plan” as required by the Farm Bill to be submitted to and approval by the USDA for the Nation to assume primary regulatory authority over the production of hemp within its jurisdiction.

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

(ff) “Person” means a natural person, corporation, cooperative, consortium, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust partnership, limited liability partnership, association or other form of legal business entity, including another governmental entity.

(gg) “Phytocannabinoid” means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9-THC and cannabidiol (“CBD”).

(hh) “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 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 any given sample.

(ii) “Produce or production” means to cultivate, process, handle or store hemp plants for market in the United States.

(jj) “Producer” means a person licensed by the Division to produce hemp under the Nation’s plan.

(kk) “Reservation” means all land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(ll) “Reverse distributor” means a person who is registered with the DEA to dispose of marijuana under the Controlled Substances Act.

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

508.4. Application

508.4-1. This law regulates the production of hemp within the jurisdiction of the Nation and shall be effective upon approval from the USDA as the Nation’s plan under the Farm Bill.

(a) In furtherance of the Nation’s inherent authority and the regulatory objectives set forth in the Farm Bill, the Nation finds that persons doing business with the Nation or persons engaged in commercial dealings, leases, licenses, easements or other transactions related to hemp production within the exterior boundaries of the Reservation have voluntarily and explicitly consented to the jurisdiction of the Nation and are subject to regulation by the Nation.

(b) Consistent with sections 508.1-1 and 508.1-2, this law shall be liberally construed to the greatest extent authorized under the Farm Bill to fulfill the purpose and policy for which it was adopted.

508.4-2. All hemp production within the jurisdiction of the Nation must meet the requirements of this law and any applicable portions of the Farm Bill.

(a) The regulations and penalties imposed by this law extend to any person engaged in activities related in any way, directly or indirectly, to hemp production, whether licensed

or not.

508.4-3. Nothing in this law shall be construed to prohibit hemp or hemp products, produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113), from being transported or shipped through the Reservation.

508.4-4. Nothing in this law limits, modifies or waives the need for a person to obtain any other license or permit required by any other applicable law of the Nation to operate a business or other entity within the Reservation or to comply with any other applicable law of the Nation, including, but not limited to, the Nation’s environmental and land use laws.

508.5. Authority

508.5-1. *General.* This law is enacted under the inherent sovereign authority of the Oneida Nation to regulate hemp as an agricultural commodity in compliance with the Farm Bill.

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

508.5-2. *Authority of the Division.* The Division is hereby delegated the authority to regulate and oversee hemp production under the Nation’s plan and shall have all powers necessary to fulfill the requirements of this law. At a minimum, the Division shall have the authority and responsibility to:

(a) Provide prospective producers with information necessary to participate in the Nation’s plan, to include, but not be limited to:

- (1) How to determine prospective geospatial locations;
- (2) How to obtain and properly submit a criminal history report; and
- (3) How to share requisite information with the Farm Service Agency.

(b) Issue licenses to produce hemp and make all decisions relating thereto;

(c) Conduct inspections and investigate complaints;

(d) Develop standard operating procedures, protocols and forms necessary to administer this law;

(e) Enforce this law through appropriate means, including, but not limited to, ensuring that producers licensed through the Nation are operating in compliance with the Farm Bill.

508.6. Licensing Requirements

508.6-1. *License Required.* Any person engaging in or intending to engage in hemp production within the jurisdiction of the Nation shall only do so pursuant to a valid license issued by the Division in accordance with this law.

(a) *Valid License.* For purposes of this law, a valid license means the license is unexpired, unsuspended and unrevoked.

(1) A license may not be transferred or assigned absent prior approval from the Division, which, at a minimum, shall be contingent upon:

(A) The license not being subject to a pending revocation or suspension under section 508.11 of this law; and

- 209 (B) The transferee or assignee undergoing and being approved for licensure
210 pursuant to the application process set forth in section 508.6-2 of this law.
- 211 (b) *License Period.* All licenses shall be valid for a period of three (3) year from the date
212 of issuance unless otherwise revoked at an earlier date pursuant to this law or any other
213 applicable law of the Nation.
- 214 508.6-2. *Application Process.* Any person under the jurisdiction of the Nation who wishes to
215 engage in the production of hemp shall apply to the Division in accordance with this section.
- 216 (a) Applicants must submit a complete application to the Division pursuant to the process
217 set forth in the standard operating procedure adopted by the Division before the application
218 will be accepted or considered. The application process shall require, at a minimum, that
219 the applicant provide/submit the following:
- 220 (1) The applicant's full name, address, telephone number and, if available, email
221 address;
- 222 (A) If the applicant represents a business or other entity where the business/
223 entity will be the producer, the applicant shall be required to provide the
224 business/entity's:
- 225 (i) Full business/entity name;
- 226 (ii) Principal business/entity location address;
- 227 (iii) Key participants' full name and title;
- 228 (iv) EIN number or, if no EIN number, Social Security Number; and
- 229 (v) Email address, if available.
- 230 (2) The street address (if possible), legal description and geospatial location for
231 each field, greenhouse, building or site where hemp will be cultivated, handled,
232 processed or stored;
- 233 (3) Proof of ownership of the land and/or property where hemp will be produced;
234 or proof of permission from the land/property owner to utilize the land and/or
235 property where hemp will be produced for hemp production;
- 236 (4) A description of the intended output (e.g. raw hemp or some other hemp
237 product), method of cultivation (e.g. organic, natural or genetically modified) and
238 any pesticides, herbicides or other potentially hazardous materials the applicant
239 intends to use;
- 240 (5) An acknowledgment that by signing the application, the applicant is agreeing
241 to abide by all rules and regulations governing the Nation's plan and is further
242 certifying that the information provided in and submitted with the application is
243 accurate and truthful;
- 244 (6) A criminal history report that was completed no greater than sixty (60) days
245 before the application submission date;
- 246 (A) For businesses/entities, a criminal history report shall be completed for
247 each of the key participants.
- 248 (7) The licensing fee set pursuant to the fee schedule created by the Division and
249 approved by the Oneida Business Committee through resolution; and
- 250 (8) Any further information, disclosure or consent required under the Division's
251 governing standard operating procedure.

(b) Applications for renewal, transfer and assignment shall be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change as defined in the Division's governing standard operating procedure.

(1) The initial fee for license transfers and assignments shall be prorated for that term as set forth in the licensing fee schedule created by the Division and approved by the Oneida Business Committee through resolution.

(c) A license modification shall be requested pursuant to the process set forth within the Division's governing standard operating procedure if there is any change to the information submitted in the initial or renewal application including, but not limited to, the sale of a business/entity, the production of hemp in a new location, or a change in any key participants who are producing under the license.

(1) Applicants shall notify the Division immediately shall there be any change in the information provided during the application process.

(d) The application and all materials submitted during the application process, whether pursuant to a request for an initial, renewed, transferred/assigned or modified license, shall become the property of the Nation and shall be maintained by the Division for a minimum of seven (7) years.

508.6-3. *License Eligibility.*

(a) Applicants who materially falsify any information provided in or along with their application shall be deemed ineligible for licensure.

(b) Applicants with a state or felony conviction relating to a controlled substance shall be deemed ineligible to receive a license for a period of ten (10) years from the date of their conviction.

(1) *Exception.* Persons lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and whose conviction also occurred before that date shall not be considered ineligible hereunder.

508.6-4. *License Issuance.* Applications for licensure and license renewal, transfer/assignment or modification shall be reviewed by the Division for completeness and to determine an applicant's eligibility.

(a) The Division shall set the process for issuing licenses hereunder in a standard operating procedure that includes, at a minimum:

(1) That the applicant be notified of his or her eligibility within thirty (30) days following the Division's receipt of a complete application;

(2) That denial of an application for licensure, license renewal, license transfer/assignment or license modification be provided to the applicant in writing and include the basis for denial, as well as information on how to appeal the Division's decision;

(3) That each applicant deemed eligible for licensure shall be assigned a license identification number; and

(4) That for each license it issues, the Division, in cooperation with the Division of Land Management, shall record the type of land designation for each parcel of land listed in the licensee's application as an intended hemp production site and maintain such information within the Division's files for a minimum of seven (7)

years.

508.7. Required Recordkeeping and Reporting

508.7-1. Division Reporting.

(a) *Hemp Grower Report.* By the first of each month, the Division shall submit to the USDA a report providing the contact information and the status of the license issued for each producer under the Nation’s plan. The report shall contain:

(1) For each new producer who is a natural person, the producer’s:

(A) Full name;

(B) License identification number;

(C) Business address;

(D) Telephone number;

(E) Email address (if available); and

(F) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial location.

(2) For each new producer that is a business/entity, the business/entity’s:

(A) Full business/entity name;

(B) License identification number;

(C) Principal business/entity location address;

(D) Full name, title and email address (if available) of each key participant;

(E) A legal description of the land on which the producer is producing or intends to produce, including, to the extent practicable, its geospatial location.

(3) For each producer that was included in a previous report and whose reported information has changes, the report shall include the previously reported information and the new information.

(b) *Hemp Disposal Report.* By the first of each month, the Division shall submit a report to the USDA of any occurrence of non-conforming plants or plant materials and provide a disposal record for those plants and plant materials that contains:

(1) The producer’s name and address;

(2) The producer’s license identification number;

(3) Location information, such as lot number, location type and geospatial location or other location descriptor for the production area subject to disposal;

(4) Information on the agent handling the disposal; and

(5) The total acreage.

(c) *Annual Report.* By December 15 of each year, the Division shall submit an annual report to the USDA that contains the following information:

(1) Total planted acreage;

(2) Total harvested acreage; and

(3) Total disposed of acreage.

508.7-2. Producer Reporting.

(a) *Planting and Harvesting.* The Division shall create a standard operating procedure which sets forth a process for producers to report planting, pre-harvest and post-harvest

information to the Division that will allow for the Division to carry out its reporting duties under section 508.7-1 of this law in a timely manner.

(b) *Test Results.* Producers shall share any test results obtained under section 508.8 of this law with the Division and, as required, to the USDA pursuant to the process set forth in the Division's standard operating procedure for producer reporting.

(c) *FSA Reporting.* Upon the issuance of a license, producers shall report their hemp crop acreage to the FSA using form FSA-578 or any alternative form approved by the FSA for purposes hereof.

(1) The report shall include, at a minimum:

(A) The producer's contact information and license number;

(B) The crop acreage; and

(C) The specific location where hemp is being produced.

(i) The specific location where hemp is being produced must be identified, to the extent practicable, by the geospatial location for each lot, greenhouse, building or site where hemp will be produced.

(2) Producers are responsible for filling out and filing the FSA-578 or alternative form consistent with the process set by the FSA.

(3) Producers shall be responsible for forwarding a copy of the FSA-578 or alternative form to the Division at the same time they file it with the FSA.

(d) *Convictions.* Within five (5) business days of conviction, the producer must notify the Division of any felony convictions that would subject the producer to immediate revocation under section 508.11-4 of this law.

508.7-3. *Recordkeeping.*

(a) The Division shall retain for a minimum of (7) years all information required to be collected in section 508.6 of this law for every license it issues, renews, transfers/assigns and modifies in accordance with the Nation's plan.

(b) The Division and producers shall retain all documentation referenced within sections 508.7 and 508.8 of the law for a period of at least seven (7) years.

(1) Producers shall retain the documentation in a manner that it can be readily provided to the Division upon request.

508.8. Sampling and Testing

508.8-1. *General.* Samples of all hemp produced under the Nation's plan must be collected and tested in accordance with this section of the law to determine whether it exceeds the acceptable hemp THC level.

(a) Subject to section 508.8-1(a)(1), the Division shall be responsible for the collection and testing of samples of all hemp produced under the Nation's plan.

(1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the collection and testing of samples hereunder.

(b) Producers shall be responsible to pay any fees associated with the sampling and testing of their hemp production.

(c) Alternative sampling and testing protocols may be used in place of the protocols set forth herein if approved by the USDA as being comparable and similarly reliable to the

baseline mandated by the Farm Bill.

508.8-2. *Sampling*. The method used for sampling must:

- (a) Require that the sample is taken from the flower material of the cannabis plant;
- (b) Be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level;
- (c) Ensure that a representative sample is collected that represents a homogeneous composition of the lot; and
- (d) Ensure that samples of hemp plant material from one lot are not commingled with hemp plant material from other lots.

508.8-3. *Protocol for the Collection of Samples*. The hemp to be selected for sampling shall be determined by a representative of the Division or the agent/agency appointed by the Division and, subject to section 508.8-1(c), shall be collected as follows:

- (a) Producers shall be required to report in writing to the Division at least fifteen (15) days before an expected harvest date that a crop is about to be harvested.
 - (1) The Division's receipt of a harvest notification triggers a site inspection and sample collection by the Division, or the agent/agency appointed by the Division.
 - (2) Producers shall not harvest any crop prior to samples being collected.
- (b) The Division shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest.
 - (1) During a scheduled sample collection, the producer or authorized representative of the producer shall be present at the growing site.
 - (2) The Division, or agent/agency appointed by the Division, shall be provided with complete and unrestricted access to all hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the production of hemp and other cannabis plants, if any, and all locations listed in the producer's application.
- (c) A separate sample shall be taken for each variety and from each lot of a given variety.
- (d) Cuttings shall be collected to make one representative sample as follows:
 - (1) The top twenty (20) cm of the hemp plant's flower, including female floral material, shall be clipped;
 - (2) Cuttings from at least five (5) hemp plants within the lot shall be taken and the complete sample shall be placed in a paper bag;
 - (3) The bag shall be sealed by folding over the top once and stapling shut;
 - (4) The bag shall be labeled with a sample identification that includes, at a minimum, the last four (4) numerical digits of the producer's license identification number, the date (MM/DD/YY) of collection, and a two (2) digit sequential sample number assigned by the Division, or agent/agency appointed by the Division.
- (e) The sample shall be transported to the Division for storage in a secure area until it is sent to the testing lab for analysis.
- (f) Producers shall be required to harvest their crop not more than fifteen (15) days following the date of the sample collection.
 - (1) If the producer fails to complete the harvest within fifteen (15) days of the sample collection, a secondary sample of the lot shall be required to be submitted

for testing.

(2) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Division.

(3) Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the processor, or commingled, or extracted, until the Division releases the material.

(4) Producers shall be notified within thirty (30) days of sampling of the status of the testing.

(5) Any producer may request additional testing at its cost if it is believed that the original delta-9 THC concentration level test results were in error.

508.8-4. *Testing.* Subject to section 508.8-1(c), sample testing shall be completed by one of the DEA-registered laboratories designated by the Division for meeting the requirements of the Nation's plan and the Farm Bill.

(a) Laboratories designated by the Division hereunder shall be approved by the Oneida Business Committee through resolution.

508.8-5. *Testing Protocol.*

(a) *Methodology.* The testing process shall be able to accurately identify whether a sample contains a delta-9 THC content concentration level that exceeds the acceptable hemp THC level by including, at a minimum, a validated testing methodology that uses:

(1) Postdecarboxylation or other similarly reliable method;

(2) Considers the potential conversion of THC-A in hemp into THC; and

(3) A test result that measures total available THC derived from the sum of the THC and THC-A content.

(A) Testing methodologies meeting the requirements of this section include gas or liquid chromatography with detection.

(b) The total THC concentration level shall be determined and reported on a dry weight basis.

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

(A) Laboratory quality assurance must ensure the validity and reliability of test results;

(B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;

(C) The demonstration of testing validity must ensure consistent, accurate and analytical performance;

(D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of the Nation's plan; and

(E) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of the Nation's plan.

(c) 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 the Nation’s plan.

(1) Lots that do not test at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce.

(2) The Division shall ensure the lot is disposed of in accordance with the Nation’s plan, the Controlled Substances Act and the DEA regulations.

(3) The Division shall notify the USDA of its intent to dispose of non-conforming plants and verify disposal by submitting required documentation.

(d) Measurement of uncertainty must be estimated and reported with test results.

(1) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

508.9. Disposal of Noncompliant Plants

508.9-1. If the test results conclude that the THC levels exceed the acceptable hemp THC level, the lot represented by the sample shall be destroyed in accordance with this section.

(a) In the event test results exceed the acceptable hemp THC level, that harvest must be segregated from other harvested lots and remain segregated.

(1) Leaf and floral material from the harvest of that lot must then be destroyed.

(b) If a variety is designated as a prohibited variety, the Division shall require the producer to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Division for destruction by composting or burning.

508.9-2. Destruction

(a) Subject to section 508.9-2(a)(1), the Division shall be responsible to dispose of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.

(1) The Division may, in its discretion, appoint an outside agent or agency, other than a producer, to carry out the destruction of noncompliant hemp hereunder.

(b) So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by burning or by composting where it is made unusable and rendered indistinguishable from any other plant material.

(c) The Division 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 the Nation’s plan and attach the records demonstrating the appropriate disposal of all those plants and materials in the lot from which the representative samples were taken.

(1) The notification shall include the test results from the representative samples.

508.10. Compliance

508.10-1. *Inspections.* The Division shall conduct scheduled inspections of all producers and production sites at least once per growing season to verify that hemp is not being produced in violation of this law.

(a) In addition to scheduled inspections, the Division shall have authority to conduct random inspections of all producers and production sites at any time.

(b) Whether a scheduled or random inspection, the Division shall be granted unrestricted

access to the production sites.

508.10-2. Producers must maintain copies of all records and reports necessary to demonstrate compliance with the Nation's plan for a minimum of seven (7) years.

508.11. Enforcement

508.11-1. *General.* Violations with this law shall be subject to enforcement solely in accordance with this section.

508.11-2. *Negligent Violations.* A producer that negligently violates the Nation's plan and/or this law shall not, as a result of that violation, be subject to any criminal enforcement action by the Tribal, federal, state or local government.

(a) Negligent violations shall include, but not be limited to:

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

(2) A failure to obtain a license from the Division to produce hemp;

(3) The production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.

(A) Cannabis produced with a delta-9 tetrahydrocannabinol concentration of not more than 0.5 percent on a dry weight basis shall not be considered a negligent violation if the producer made reasonable efforts to grow hemp.

(i) The cannabis plants and plant materials from such representative samples must still be disposed of in accordance with section 508.9 of this law.

(b) If the Division finds that a negligent violation occurred, it shall establish a corrective action plan that includes, at a minimum:

(1) A plan to correct the violation;

(2) A reasonable date by which producers shall correct the negligent violation; and

(A) The Division shall be responsible to monitor producers under corrective action plans for implementation and adherence thereto.

(3) A requirement that producers periodically report to the Division on their compliance with the Nation's plan for a period of not less than the next two (2) years from the date of the negligent violation.

(c) Producers found to have negligently violated this law three (3) times within a five (5) year period shall be ineligible to produce hemp for a period of at least five (5) years from the date of the third violation.

508.11-3. *Violations Made with a Culpable Mental State Greater Than Negligence.*

(a) If it determines that a producer violation was committed with a culpable mental state greater than negligence, the Division shall immediately report the producer to the U.S. Attorney General, USDA and the Nation's chief law enforcement officer or chief law enforcement officer of the state charged with receiving such information.

508.11-4. *Enforcement.*

(a) *Suspensions.*

(1) The Division may suspend a license if it determines that the producer has:

(A) Engaged in conduct considered a violation of this law; or

- 553 (B) Failed to comply with a corrective plan or other written order of the
554 Division relating to a negligent violation of this law.
- 555 (2) Producers whose licenses have been suspended shall be prohibited from:
- 556 (A) Absent written permission from the Division, handling or removing
557 hemp or cannabis from the location where hemp or other cannabis was
558 located at the time when the Division issued its notice of suspension; and
559 (B) Producing hemp during the period of suspension.
- 560 (3) A suspended license may be restored after a minimum waiting period of one
561 (1) year.
- 562 (A) Producers whose license have been suspended may be required to
563 comply with a corrective action plan before having their licenses restored.
- 564 (b) *Immediate Revocation.* The Division shall immediately revoke a license if it finds that
565 the producer:
- 566 (1) Plead guilty to, or is convicted of, any felony related to a controlled substance
567 or a violent/sex crime;
- 568 (2) Made materially false statements during the application process or to Division
569 representatives while in the process of monitoring or enforcing this law with a
570 culpable mental state greater than negligence;
- 571 (3) Was found to be growing cannabis exceeding the acceptable hemp THC level
572 with a culpable mental state greater than negligence; or
- 573 (4) Was found to have negligently violated this law three (3) times in a five (5)
574 year period.

575
576 **508.12. Appeals**

577 508.12-1. Any person aggrieved by an action of the Division may appeal to the Judiciary in
578 accordance with governing laws of the Nation.

579
580 *End.*

581
582
583
584 Adopted - BC-__-__-__-__
585