

**Title 5. Business - Chapter 508  
INDUSTRIAL HEMP**

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**508.1. Purpose and Policy**

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

- (a) Authorize the production of hemp within the 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 Oneida, as well as federal, law; 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 the Oneida Business Committee by resolution BC-12-09-20-A.

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 This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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, Land and Agriculture Division or other named entity delegated the authority to carry out the responsibilities and powers set forth in section 508.5-2 of this law.

(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 approved 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

(B) The transferee or assignee undergoing and being approved for licensure pursuant to the application process set forth in section 508.6-2 of this law.

(b) *License Period.* All licenses shall be valid for a period of three (3) years from the date of issuance unless otherwise revoked at an earlier date pursuant to this law or any other

applicable law of the Nation.

508.6-2. *Application Process.* Any person under the jurisdiction of the Nation who wishes to engage in the production of hemp shall apply to the Division for licensure in accordance with this section.

(a) Applicants must submit a complete application to the Division pursuant to the process set forth in the standard operating procedure adopted by the Division before the application will be accepted or considered. The application process shall require, at a minimum, that the applicant provide/submit the following:

(1) The applicant's full name, address of residency, telephone number and, if available, email address;

(A) If the applicant represents a business or other entity where the business/entity will be the producer, the applicant shall be required to provide the business/entity's:

(i) Full business/entity name;

(ii) Principal business/entity location address;

(iii) Key participants' full name and title;

(iv) EIN number or, if no EIN number, Social Security Number; and

(v) Email address, if available.

(2) The street address (if possible), legal description and geospatial location for each field, greenhouse, building or site where hemp will be cultivated, handled, processed or stored;

(3) Proof of ownership of the land and/or property where hemp will be produced; or proof of permission from the land/property owner to utilize the land and/or property where hemp will be produced for hemp production;

(4) A description of the intended output (e.g. raw hemp or some other hemp product), method of cultivation (e.g. organic, natural or genetically modified) and any pesticides, herbicides or other potentially hazardous materials the applicant intends to use;

(5) An acknowledgment that by signing the application, the applicant is agreeing to abide by all rules and regulations governing the Nation's plan and is further certifying that the information provided in and submitted with the application is accurate and truthful;

(6) A Criminal History Report that was completed no greater than sixty (60) days before the application submission date;

(A) For businesses/entities, a Criminal History Report shall be completed for each of the key participants.

(7) The licensing fee set pursuant to the fee schedule created by the Division and approved by the Oneida Business Committee through resolution; and

(8) Any further information, disclosure or consent required under the Division's 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 Area 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) Address of residency;
  - (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 of residency;
- (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.

(A) 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 facilitate the disposal of all hemp that exceeds the acceptable hemp THC level in accordance with the Controlled Substances Act and DEA regulations.
  - (1) The destruction of hemp that exceeds the acceptable hemp THC level shall be carried out by a reverse distributor, a USDA approved law enforcement officer or other agent/agency so long as authorized under the Farm Bill and/or any regulation promulgated in accordance therewith.
- (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

(B) Failed to comply with a corrective plan or other written order of the Division relating to a negligent violation of this law.

(2) Producers whose licenses have been suspended shall be prohibited from:

(A) Absent written permission from the Division, handling or removing hemp or cannabis from the location where hemp or other cannabis was

- located at the time when the Division issued its notice of suspension; and  
(B) Producing hemp during the period of suspension.
- (3) A suspended license may be restored after a minimum waiting period of one (1) year.
- (A) Producers whose license have been suspended may be required to comply with a corrective action plan before having their licenses restored.
- (b) *Immediate Revocation.* The Division shall immediately revoke a license if it finds that the producer:
- (1) Plead guilty to, or is convicted of, any felony related to a controlled substance or a violent/sex crime;
  - (2) Made materially false statements during the application process or to Division representatives while in the process of monitoring or enforcing this law with a culpable mental state greater than negligence;
  - (3) Was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence; or
  - (4) Was found to have negligently violated this law three (3) times in a five (5) year period.

### **508.12. Appeals**

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

*End.*

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Adopted - BC-12-09-20-A