

## **TITLE 25. AGRICULTURE**

### **ARTICLE I**

#### **GENERAL PROVISIONS**

##### **CHAPTER 1. CONSTRUCTION**

###### **Sec. 25-1101. Construction.**

Nothing in this Title shall be construed as a waiver or diminution of or limitation upon the sovereignty of the Tribe or the jurisdiction of the Tribe.

##### **CHAPTER 2. MISCELLANEOUS**

###### **Sec. 25-1201. Sovereign Immunity.**

Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Sac & Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, enterprises, agents, officials, or employees.

###### **Sec. 25-1202. Severability.**

If any article, chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining articles, chapter, sections, or provisions of this Title and amendments made by this Title shall continue in full force and effect.

##### **CHAPTER 3. DEFINITIONS**

###### **Sec. 25-1301. Definitions.**

Unless context requires otherwise, as used in this Title:

- (a) "Council" means the tribal council of the Sac & Fox Tribe of the Mississippi in Iowa
- (b) "DEA" means the United States Drug Enforcement Administration.
- (c) "Meskwaki Settlement" means all trust lands under the jurisdiction of the Tribe.
- (d) "MNPD" means the Meskwaki Nation Police Department.
- (e) "MNR" means the Meskwaki Department of Natural Resources.
- (f) "Secretary" means the United States Secretary of Agriculture.
- (g) "State" means the State of Iowa.
- (h) "Tribal Prosecutor" means the chief prosecutor of the Sac & Fox Tribe of the Mississippi in Iowa.
- (i) "Tribe" means the Sac and Fox Tribe of the Mississippi in Iowa.
- (j) "U.S. Attorney General" means the Attorney General of the United States.
- (k) "USDA" means the United States Department of Agriculture.

## TITLE 25. AGRICULTURE

### ARTICLE II

#### HEMP PRODUCTION

##### CHAPTER 1. GENERAL PROVISIONS

###### Sec. 25-2101. Definitions.

Unless the context requires otherwise, as used in this Article:

- (a) “Acceptable Hemp THC Level” means when the application of the Measurement of Uncertainty to the reported Total THC concentration level of a sample on a dry weight basis produces a distribution or range that includes 0.3% or less.
- (b) “Cannabis” means the genus of flowering plant in the family *Cannabaceae*, of which *Cannabis sativa* is a species and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof, in which the delta-9-tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.
- (c) “Compliant Hemp” means Hemp that has been proven through Pre Harvest Testing to contain an Acceptable Hemp THC Level.
- (d) “Culpable Mental State” has the meaning set forth in Title 13. Law & Order of the Meskwaki Tribal Code.
- (e) “Dry Weight Basis” refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance.
- (f) “Gas Chromatography” means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. Gas chromatography relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (g) “Harvest” means ending the growth of the plant and removing it from the growing medium to begin processing.
- (h) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
- (i) “High-Performance Liquid Chromatography” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. High-performance liquid chromatography relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.
- (j) “Key Participant” means a person or persons who have a direct or indirect financial interest in the entity producing Hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field or shift managers.
- (k) “Licensee” means the holder of a Tribal Hemp License.

- (l) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of Cannabis. For purposes of this title the Licensee shall define a Lot in terms of location, acreage, and variety for reporting and testing purposes.
- (m) “Measure of Uncertainty” 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.
- (n) “Negligence” for the purposes of this title means failure to exercise the level of care that a reasonably prudent person would exercise in complying with this Title and other applicable law and regulations.
- (o) “Pre-Harvest Testing” means the test for THC content of a representative sample of a Lot required before harvesting by the Licensee may begin.
- (p) “Tribal Hemp License” means the license to grow Hemp issued by the Tribal Hemp Officer.
- (q) “Tribal Hemp Officer” means the employee of the Tribe designated to issue Tribal Hemp Licenses, ensure Licensee compliance with the laws and regulations of the Tribe, and collect samples for pre-harvest testing, and report information to Federal agencies as required by law.
- (r) “Tribal Hemp Regulations” are departmental regulations developed by the Tribal Hemp Officer for the implementation of this Title, which must be consistent with this Title, federal law, and federal regulations. Such regulations must be approved by Tribal Council before they become effective.
- (s) “Total THC” is the measure of THC on a dry weight basis which includes or accounts for the chemical conversion of delta-9-tetrahydrocannabinolic acid into delta-9-tetrahydrocannabinol.

**Sec. 25-2102. Purpose of this chapter.**

The purpose of this Article is to establish the requirements to grow Hemp under the laws of the Sac & Fox Tribe of the Mississippi in Iowa.

**Sec. 25-2103. Findings.**

Hemp has historically been used in a wide range of consumer and industrial products. The total retail value of Hemp products in the United States has been estimated at over \$500 million. The Tribe has determined that it will regulate Hemp grown within its jurisdiction as an expression of its sovereignty.

**Sec. 25-2104. Tribal Hemp Officer.**

The position of Tribal Hemp Officer is hereby created. The Tribal Hemp Officer shall report to the Director of MNR and their duties shall include:

- (a) Collecting and providing required information to the USDA.
- (b) Collecting samples from Licensees for testing before harvest.
- (c) Sending samples for lab testing.
- (d) Ensuring that Licensees are compliant with this Title.
- (e) Developing corrective action plans and ensuring that they are followed.

- (f) Completing USDA sampling training to become an approved sampling agent, and keeping track of any changes in USDA sampling procedure.
- (g) Drafting Tribal Hemp Regulations as needed, which shall require council approval.
- (h) Tracking total acreage planted, harvested, and disposed of each year by Licensees.
- (i) Other duties as assigned.

**Sec. 25-2105. Final Decisions of Tribal Hemp Officer.**

For the purpose of clarification actions by the Tribal Hemp Officer are subject to the provisions of Tribal Code Title 2. Administration.

**Sec. 25-2106. Effect of This Title on Title 13.**

The use of a Total THC standard and Measure of Uncertainty in this Title is for Licensee compliance with this Title only and does not apply to nor alter definitions or standards used in Title 13 regarding controlled substances.

**Sec. 25-2107. Transportation of Hemp.**

Nothing in this Title or any other title of the Tribal Code shall be interpreted as prohibiting the transportation of harvested Hemp or Hemp products through or to a location on the Meskwaki Settlement.

**CHAPTER 2. LICENSE TO GROW HEMP**

**Sec. 25-2201. License Required.**

Cannabis seeds, clones, and plants may not be imported and Cannabis cannot be grown on the Meskwaki Settlement except by a tribally chartered corporation holding a Tribal Hemp License.

**Sec. 25-2202. Licensing Authority.**

All Tribal Hemp License Applications shall be submitted to the Tribal Hemp Officer, who shall review the application and either approve or deny the application based on criteria set forth in this Title. A Tribal Hemp License may only be issued to corporations chartered under the Sac & Fox Tribe of the Mississippi in Iowa Tribal Code.

**Sec. 25-2203. Form of License.**

Upon approval of an application the Tribal Hemp Officer shall issue a physical license to the applicant. Every license issued shall contain the name of the business entity, a license number, and expiration date. License numbers shall start with the Tribe's BIA tribal code, F51490, and end with the license number. For example F51490\_0001, F51490\_0002, F51490\_0003, etc.

**Sec. 25-2204. Applications for License.**

The Tribal Hemp Officer shall develop and make available a license application form which collects the following information: full name of business, address of principal location, telephone number, and email address, EIN number, list of key participants in the corporation. The applications shall also contain a certification by the applicant that they shall comply with the requirements of this title and with federal law and regulations. Additionally the applicant must submit a complete FBI criminal history report for each key participant that is not dated more than 60 days before the submission of the application and the Key Participant information requested in Sec. 25-2205(a) of this Title.

**Sec. 25-2205. Key Participant Information and Criminal History.**

(a) Each Key Participant must submit the following information to the Tribal Hemp Officer with the License Application or at the time that they become a Key Participant, they must also update the information if any of it changes. Failure to provide truthful and accurate information may result in a denial of the License Application.

(1) Full name including other names used.

(2) Date and place of birth.

(3) Residences for past five (5) years.

(4) Drivers' License number.

(5) Description of any criminal history.

(6) If the Key Participant has ever held or applied for a professional or occupational license or permit issued by a state, Indian tribe or other jurisdiction and been denied or had the license revoked.

(7) A description of any previous business relationship with the Hemp or Marijuana industry.

(b) No individual may participate as a key participant in the production of hemp under this title if they have a tribal, state, or federal felony conviction relating to a controlled substance within the last ten (10) years. However, this shall not apply to any individual who was lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

**Sec. 25-2206. Review.**

Upon receipt of an application and an application fee of \$400.00 the Tribal Hemp Officer shall review the information for accuracy and ensure that no key participant is disqualified. If all information is accurate and all key participants are qualified the Tribal Hemp Officer shall issue a Tribal Hemp License upon payment of a \$500.00 license fee.

**Sec. 25-2207. False Information.**

Any entity or individual that submits an application containing materially false information shall be ineligible for licensure under this program.

**Sec. 25-2208. Renewal of License.**

A Tribal Hemp License shall be good for a period of three (3) years from issuance. As long as the Licensee remains in good standing they may renew their license for a subsequent three (3) year period upon payment of a renewal fee of \$500.00.

**CHAPTER 3. LICENSING REPORTING REQUIREMENTS**

**Sec. 25-2301. Location reporting to Tribal Hemp Officer.**

Licensee must report the location of land on which they will be growing Cannabis to the Tribal Hemp Officer. The report must include GPS coordinates of the land and a legal description of the land. The Tribal Hemp Official shall report this information to the USDA as required by regulations and shall keep the information for a period of no less than three years.

**Sec. 25-2302. Location reporting to USDA.**

Licensee must report crop acreage; total acreage planted, harvested, and disposed of; Tribal Hemp License number; primary business address; GPS location of each lot or greenhouse where Cannabis is grown; acreage of any greenhouse or indoor square footage dedicated to production of Hemp; and other information as required by USDA through the Agricultural Marketing Service or Farm Service Agency as directed by the USDA.

**Sec. 25-2303. Changes in Key Participants.**

Licensee must report any change in Key Participants or information that was contained in the license application to the Tribal Hemp Officer within three (3) business days of knowledge of the change. This includes Key Participants being convicted of a controlled substance related felony.

**Sec. 25-2304. Relocation of Plants.**

Once a Cannabis plant has been moved to the location where it shall grow until Harvest the Licensee shall inform the Tribal Hemp Officer of the location of the Lot. Plants may not be removed from the Lot other than for harvest or destruction. For clarification concerning indoor growing, moving a plant into a flowering room from a grow room is allowed, but the Licensee must inform the Tribal Hemp Officer of the new location of the Lot.

**Sec. 25-2305. Reporting of Lots.**

Licensee shall inform the Tribal Hemp Officer of the location and boundaries of a Lot once plants or seeds have been put into place to grow until Harvest. The boundaries of Lot must be clearly marked and such that there will not be any comingling with an adjacent Lots. All plants within a designated Lot must be of like variety.

**Sec. 25-2306. Roguing.**

Licensees may rogue their indoor and outdoor Lots to ensure the health of their plants and make sure there is not a mixing of varieties.

**Sec. 25-2307. Request for disposal of a Lot.**

If an entire Lot needs to be disposed of before Harvest because of infection by pests, disease, or for other good cause in the determination of the Tribal Hemp Officer, the Licensee may request disposal of the lot and the Tribal Hemp Officer shall document and supervise the disposal.

**CHAPTER 4. INFORMATION SHARING, REPORTING**

**Sec. 25-2401. Licensee information sharing with USDA.**

The Tribal Hemp Officer shall provide for each Licensee the full business name, primary address, list of the full name and title of each key participant, telephone number, email address if available, legal description with GPS coordinates of land on which hemp is grown, license status, and EIN of the business to the USDA through the State and Tribal Hemp Producer Report (AMS-23) via fax, mail, or e-mail. The Tribal Hemp Officer shall notify USDA of changes in the above information through the same form. The Tribal Hemp Officer shall submit this form to the USDA on the 1<sup>st</sup> business day of each month.

**Sec. 25-2402. Required USDA reports.**

The Tribal Hemp Official shall submit the State and Tribal Hemp Producer Report (AMS-23) and State and Tribal Hemp Disposal Report (AMS-24) to the USDA on the first business day of each month. Additionally the Tribal Hemp Officer shall submit the State and Tribal Hemp Annual Report (AMS-25) on December 15<sup>th</sup> of each year.

**Sec. 25-2403. Use of updated or new USDA forms.**

If the USDA changes the forms required or requires additional forms be submitted the Tribal Hemp Officer shall complete and submit those forms as required by USDA regulation.

**Sec. 25-2404. Record retention.**

The Tribal Hemp Officer shall keep copies of the forms and information submitted to the USDA for at least a three year period.

**CHAPTER 5. TESTING**

**Sec. 25-2501. Pre-harvest testing required.**

No licensee may harvest Hemp until representative sample testing as required by this title and federal law has been completed for the Lot to be harvested. Once the sample has been taken the licensee cannot harvest until a test result showing the Lot is Compliant Hemp has been returned, but the Lot must be harvested within 15 days from when the test sample was taken. If it has been longer than 15 days a new sample must be collected for testing.

**Sec. 25-2502. Sampling procedure.**

The Tribal Hemp Officer shall be accompanied by a representative of the Licensee while they take representative samples of the requested Lot. The Tribal Hemp officer will take the samples as described in the USDA's Sampling Guidelines for Hemp Growing Facilities, and shall keep themselves informed of any sampling guideline changes issued by the USDA. The Tribal Hemp Officer shall then overnight the samples to a lab registered with the DEA to handle controlled substances that was selected by the Licensee. It is the Licensee's responsibility to ensure the lab is DEA certified and will comply with the requirements of this Title and USDA regulations.

**Sec. 25-2503. Lab requirements.**

Such facilities shall conduct tests of the sample material for total available THC, which is the sum of THCA after conversion and delta-9 tetrahydrocannabinol, on a dry weight basis using post-decarboxylation or other similarly reliable methods approved by the Secretary. The facilities must follow the guidelines set out in the USDA's Testing Guidelines for Identifying Delta-9 Tetrahydrocannabinol (THC) Concentration in Hemp when conducting test and reporting results. Both High-Performance Liquid Chromatography and Gas Chromatography with detection are acceptable testing methodologies when performed in accordance with the above mentioned USDA guidelines. Other testing methodologies may be used once they have been approved by the USDA.

**Sec. 25-2504. Lab report requirements.**

The lab conducting the testing must report the results to the Tribal Hemp Officer and the Licensee. They must also report the results to the USDA using the Laboratory Test Results Report, or then current form, found on the USDA website.

**Sec. 25-2505. Disqualification of reports missing information.**

Any report of test results that does not include the Total THC percentage of the sample on a dry weight basis and Measure of Uncertainty shall not be considered a valid pre harvest test.

**Sec. 25-2506. Result analysis.**

For the purpose of determining if the Lot that was tested is Compliant Hemp the Tribal Hemp Officer shall analyze the reported Total THC percentage and the range reported as the Measure of Uncertainty to determine if the sample contains an Acceptable Hemp THC Level. If 0.3% or less total THC falls within the distribution range then the Lot shall be deemed Compliant Hemp. The lower end of the distribution is found by subtracting the measure of uncertainty from the reported Total THC and the upper end of the range is found by adding the Measure of Uncertainty. For example if the lab reports a measure of uncertainty of +/-0.06 and Total THC level of 0.35% then the Lot will be deemed compliant as the distribution range is 0.29% to 0.41% and 0.3% is within the distribution range.

**Sec. 25-2507. Presumption of non-compliance.**

A Test result with 95% certainty or greater that the Total THC level is greater than 0.3% on a dry weight basis shall be deemed non-compliant and the lot that the sample came from shall be disposed of or re-tested pursuant to this Title.

**Sec. 25-2508. Payment for sampling and testing.**

Licensee shall be responsible for the cost of taking samples and testing the samples.

**Sec. 25-2509. Prohibition of pre-harvest commingling.**

Licensee shall not allow hemp plant material from one lot to be commingled with hemp plant material from another lot before harvest. Once the lot has tested compliant and harvest has been carried out Licensee may commingle the hemp plant material with other hemp plant material that has also been harvested in compliance with this title and federal regulations. However, the Licensee must document the comingling and keep records of the constituent Lots.

**CHAPTER 6. ENFORCEMENT**

**Sec. 25-2601. Annual Audit.**

(a) Each year the Tribal Hemp Officer shall select a number of Licensees representing ten percent of the Licensees and conduct an audit to ensure that the Licensees are not producing hemp in violation of this Title or federal law. For example if there are one-hundred Licensees ten shall be chosen. If there are less than ten Licensees then only one shall be chosen.

(b) During the annual audit the Tribal Hemp Officer shall examine the Licensee's growing locations for accuracy of the reported legal description and GPS coordinates, shall ensure that no hemp in excess of what has been reported is being grown, shall ensure the accuracy of the information required in the Tribal Hemp License application, shall ensure that there are no ineligible Key Participants, shall compare information with available information the Licensee reported to the USDA for accuracy, and shall ensure that the Licensee is not using any pesticides that have not been approved for use with hemp by the EPA.

(c) During the audit the Licensee shall provide the Tribal Hemp Officer with access to documents needed to perform the audit, access to interview employees as needed, and shall provide access to all facilities used in the growing and production of hemp. Refusal to cooperate with the Tribal Hemp Officer during the annual audit shall result in the Tribal Hemp Officer revoking the Licensee's Tribal Hemp License.

**Sec. 25-2602. Inspection.**

(a) The Tribal Hemp Officer shall be given complete and unrestricted access during business hours to any land or buildings used by the Licensee where hemp is grown, processed, or stored. No notice to Licensee is required before access is requested.

(b) The Tribal Hemp Officer shall make unannounced visits to grow lots under Tribal jurisdiction as needed to ensure that Licensees are not growing, harvesting, or introducing Hemp into the stream of commerce in violation of this Title.

**Sec. 25-2603. Violations.**

Any of the following violations of this title shall be a Negligent Violation so long as they are not committed with a culpable mental state greater than negligence.

- (a) Fail to provide a legal description of the land on which the Licensee produces Hemp.
- (b) Failure to obtain a Tribal Hemp License from the Tribal Hemp Officer.



- (c) Production of Hemp containing more than 0.3% Total THC on a dry weight basis after taking into account the Measure of Uncertainty, except that a Licensee shall not be deemed to have committed a negligent violation of this section if they have used reasonable efforts to grow compliant plants, and the reported Total THC concentration is not more than 0.5% on a dry weight basis.
- (d) Nonpayment of licensee fees, testing cost, or any other amount required by this title.
- (e) Refusal to allow access to records or facilities to the Tribal Hemp Officer.
- (f) Harvesting of Hemp before test results have been returned.

**Sec. 25-2604. Prohibition on criminal prosecution of negligent violations.**

Negligent Violations of this title are not subject to criminal enforcement action by the Tribe, State, or Federal government.

**Sec. 25-2605. Corrective action plan.**

If the Tribal Hemp Officer finds that a Licensee has committed a negligent violation of this Title the Tribal Hemp Officer shall create a Corrective Action Plan for the Licensee to follow. The plan must include a reasonable date by which the negligent violation must be corrected, and a requirement that the Licensee must report their continued compliance with the plan to the Tribal Hemp Officer on a monthly basis for two years following the implementation of the plan. The Tribal Hemp Officer will conduct unannounced inspections to verify that the plan is being followed. These inspections must occur every other month at a minimum.

**Sec. 25-2606. Repeat violations.**

The Tribal Hemp Officer shall revoke the Tribal Hemp License of any Licensee who negligently violates this Title three times in a five year for a period of five years beginning the date of the third negligent violation. At the end of the five year period the party may apply for a new Tribal Hemp License.

**Sec. 25-2607. Culpable violations.**

If the Tribal Hemp Officer finds that a Licensee commits a violation of this Title with a Culpable Mental State greater than negligence the Tribal Hemp Officer shall immediately report the Licensee to the USDA, United States Attorney General, Tribal Prosecutor, and Chief of MNPD.

**CHAPTER 7. DISPOSAL OF NON-COMPLIANT HEMP AND MARIJUANA**

**Sec. 25-2701. Request for retesting upon notice of failure.**

Upon notice that a representative sample has tested as Non-Compliant the Licensee may request that the lot represented by the sample be destroyed or request a retest by a different lab up to two more times. If the final test that the Licensee request does not show the Lot is Compliant Hemp the lot shall be disposed of pursuant to this Title and other applicable law.

**Sec. 25-2702. Disposal upon final determination of non-compliance.**

(a) If a representative sample does not test as Compliant Hemp the last time the Licensee requested a retest or the Licensee does not request any retest on the lot testing as Non-Compliant then the Lot shall be disposed of pursuant to this Title and the Licensee shall bear the cost of disposal. Non-Compliant Hemp grown by a Licensee may not be further handled, processed, or allowed enter the stream of commerce and must be disposed of pursuant to this Title and federal laws and regulations.

(b) The Chief of MNPD shall be responsible for ensuring that the Lot is disposed of in a manner compliant with the applicable tribal and federal law and regulations, and documenting such disposal. The Chief of MNPD will then submit a copy of the lab report showing that the Lot was Non-Compliant and documentation of the disposal to the Tribal Hemp Officer and USDA. The Chief of MNPD shall retain these records for a period of three years.