

## AGRICULTURE CODE

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**ARTICLE 5. HEMP**

[NOTE: Except as otherwise noted, the provisions of this Article 5 of the Agricultural Code were enacted on April 9, 2020 by Ordinance No. 20-01, which became effective on the date of its enactment.]

**CHAPTER 1. GENERAL PROVISIONS**

**Section 1-101. Authority.**

- (1) This code is enacted under the inherent sovereign authority of the Tribe and pursuant to Articles VI of the Constitution of the Colorado River Indian Tribes (hereinafter “CRIT” or the “Tribes”) and Article V of the CRIT Bylaws.
- (2) This code is further enacted pursuant to Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490 (“Farm Bill”) and the Interim Final Rule (“IFR”) for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture (“USDA”) on October 29, 2019.

**Section 1-102. Policy and Purpose.**

- (1) The Colorado River Indian Tribes (hereinafter “CRIT” or the “Tribes”) 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. CRIT further finds that Hemp production can provide jobs and revenue for essential governmental programs and services in the long-term benefit of the Tribes and its members.
- (2) The Tribe further finds that tribal regulation of the possession, cultivation, processing and distribution of Hemp on tribal land is necessary to protect the health, security, and general welfare of the Tribal community. In furtherance of the Tribe’s inherent authority and the regulatory objectives set forth under the Farm Bill and the IFR, the Tribe finds that persons engaged in commercial dealings, leases, licenses, easements, right-of-way, or other arrangements or activities related to Hemp within the exterior boundaries of the reservation have voluntarily and explicitly consented to the jurisdiction of the Tribe and are subject to regulation by the Tribe.
- (3) The purpose of this Hemp code (the “code”) is to:
  - (i) Promote the production of Hemp on tribal land and the development of new commercial markets for Tribal enterprises through the sale of Hemp products;
  - (ii) Establish a regulatory framework for Tribal Hemp production which maximizes opportunities for the growth of the Hemp industry on tribal land consistent with tribal and federal law;

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- (iii) Enable the Tribes, its licensees, and affiliated institutions of higher education, to conduct research regarding the production of Hemp on tribal land; and
- (iv) Ensure that Hemp production on tribal land causes minimal impacts to the environment, human health and safety, and is consistent with tribal laws and customs.

### **Section 1-103. Scope.**

(1) This code shall govern the licensing of hemp production, cultivation, processing, distribution and research of Hemp on tribal land, and serves as the “tribal plan” described in the Agricultural Improvement Act of 2018, Pub. L. 115-334, December 20, 2018, 132 Stat. 4490 (“Farm Bill”).

(2) Nothing in this code shall be deemed to be in positive conflict with the Controlled Substances Act, 21 U.S.C. Ch. 13 § 801 *et seq.*

(3) The regulations and penalties imposed by this code extend to any person engaged in activities related in any way, directly or indirectly, to Hemp production on tribal land, whether licensed or not.

(4) In order to further these goals, this code shall be liberally construed to fulfill the purposes for which it has been adopted.

### **Section 1-104. Definitions.**

(1) “Acceptable Hemp THC level” refers to the interpretation of laboratory test results for delta-9 tetrahydrocannabinol content concentration level applying measurements for uncertainty as provided for in the IFR. When a laboratory tests a sample pursuant to this code, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The Acceptable Hemp THC level for the purpose of compliance with this code and applicable State and Federal law is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the Acceptable Hemp THC level for the purpose of plan compliance with this code and applicable State and Federal law.

(2) “Agency” means the CRIT Hemp Agency.

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- (3) “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Hemp program.
- (4) “Code” refers to this Hemp code.
- (5) “Commercial sales” means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the internet.
- (6) “Consumable product” means a Hemp product intended for human or animal consumption.
- (7) “Cultivate” means to plant, water, grow, or harvest a plant or crop.
- (8) “Farm Bill” refers to the Agriculture Improvement Act of 2018, Pub.L. 115-334 (Dec. 20, 2018).
- (9) “Director” means the Director of the Agency.
- (10) “GPS” means global positioning system.
- (11) “Grow site” means a contiguous lot, parcel, or tract of land registered with the Tribes on which a Hemp grower cultivates Hemp. A grow site may include land and buildings that are not used to cultivate Hemp.
- (12) “Harvest Lot” means a quantity of Hemp, of the same variety, harvested in a distinct timeframe that is: (1) Cultivated in one contiguous production area within a grow site; or (2) cultivated in a portion or portions of one contiguous production area within a grow site. Harvest lot does not include a quantity of Hemp comprised of Hemp grown in noncontiguous production areas.
- (13) “Harvest Lot Identifier” means a unique identifier used by the Tribes to identify the harvest lot.
- (14) “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.
- (15) “Hemp crop” means one (1) or more unprocessed Hemp plants or plant parts.
- (16) “Hemp grower” means a person licensed by the Tribes to cultivate Hemp on tribal land.
- (17) “Hemp ingredient” means all derivatives, extracts, cannabinoids, isomers, acids, salts,

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and salts of isomers of any part of the Hemp plant included in the definition of “Hemp.”

(18) “Hemp product” means a finished product with an Acceptable Hemp THC level, that is derived from, or made by, processing a Hemp crop, and that is prepared in a form available for commercial sale. The term includes, but is not limited to cosmetics, personal care products, consumable products, cloth, cordage, fiber, fuel, paint, paper, particleboard, plastics, and any product containing one or more Hemp ingredients such as cannabidiol.

(19) “Hemp program” means the Hemp production program carried out under this Hemp code.

(20) “IFR” means the Interim Final Rule for the establishment of a domestic hemp production program issued by the U.S. Department of Agriculture (“USDA”) on October 29, 2019.

(21) “Institution of higher education” has the meaning assigned to it by 20 U.S.C. § 1001 and shall expressly include tribal institutions.

(22) “Intended for consumption” means intended for a human or animal to ingest, inhale, topically apply to the skin or hair, or otherwise absorb into the body.

(23) “Person” means a natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association, or other form of legal business entity, including CRIT farms, as well as a state or local government entity.

(24) “Process” means to convert any portion of a Hemp crop into a Hemp ingredient, Hemp product, or other marketable form.

(25) “Reservation” means all territory within the original confines of the Colorado River Indian Reservation boundaries as established and approved by the act of March 3, 1865, and lands added thereto by Executive Order of November 22, 1873; Executive Order of November 16, 1874; Executive Order of May 15, 1876; and Executive Order of November 22, 1915, in Arizona and California and to which title has been given by Act of the Congress of the United States, Public Law 88-302, of April 30, 1964, and any other lands in which the Colorado River Indian Tribes acquire ownership, management, use or occupancy by virtue of purchase, gift, Act of Congress or otherwise.

(26) “Tribal Council” means the Colorado River Indian Tribal Council.

(27) “Tribal land” means all lands subject to the Tribes’ jurisdiction, including but not limited to any land on the Reservation to which the United States holds legal title in trust for the Tribes, or for any particular Indian; or owned by a particular Indian or by the Tribes subject to a restriction against alienation imposed by the United States.

(28) “Tribes” means the Colorado River Indian Tribes.

(29) “THC” means tetrahydrocannabinol and has the same meaning as delta-9 tetrahydrocannabinol.

(30) “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

**Section 1-105. Compliance with Tribal and Federal Law.**

Nothing in this code authorizes any person to violate any tribal or federal law or regulation.

**Section 1-106. Exemption from Prosecution for Certain Acts.**

No employee of a Hemp grower shall be subject to prosecution or civil penalty in Tribal Court for cultivation, production, or distribution of Hemp in accordance with this code and federal law.

**CHAPTER 2. HEMP PROGRAM**

**Section 1-201. General.**

(1) Any Person engaging in activities related to Hemp within the Tribes’ jurisdiction, including, but not limited to, growing, processing, handling, transporting, or storing Hemp, shall only do so pursuant to a valid license issued under this code.

(2) All persons conducting or engaged in activities related to Hemp on tribal land shall abide by the license requirements provided for under the Tribes’ business and professions code.

(3) Nothing in this code limits, modifies, or waives the need for a person to obtain all licenses and permits required by applicable law to operate a business on the Reservation, including but not limited to compliance with building and safety regulations, health and safety regulations, leasing and land use laws and environmental laws. The issuance of a license under this code shall not be deemed or construed as a certification of a Person’s compliance with other applicable regulations or laws. Additional licenses and permits may be necessary before a person may lawfully cultivate Hemp. It is the responsibility of the person obtaining a license under this code to comply with other applicable laws and regulations. The Agency may, as appropriate and feasible, assist persons in identifying the necessary additional licenses or permits required.

(4) Notwithstanding any rule or regulation to the contrary, the inclusion of Hemp as an ingredient in a consumable product shall not by itself render the product misbranded or adulterated.

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(5) No person shall have an expectation of privacy with respect to any location or site that is a grow site. Hemp growers, whether present or not, shall grant the Tribes, their representatives, law enforcement officials, and federal authorities, access to the grow sites for inspection and sampling, without cause and without advanced notice.

### **Section 1-202. Establishment of the CRIT Hemp Agency.**

(1) The Tribes hereby establish the CRIT Hemp Agency (the “Agency”), which is delegated the authority to oversee the regulation of Hemp production under this code. The Agency shall have all the powers necessary and proper to carry out the purposes set forth in this code. The Agency shall at a minimum:

- (i) Provide prospective applicants with information necessary to submit a complete application;
- (ii) Upon review and verification of information contained in a license application, recommend the approval or denial of license applications to Tribal Council;
- (iii) Obtain the assistance of CRIT Law Enforcement Services, DEA-approved laboratories, agricultural or environmental consultants or other third-parties as necessary to properly regulate Hemp production under this code;
- (iv) Enforce license requirements and conditions and promptly report any violations to Tribal Council and tribal prosecutors;
- (v) Develop policies, procedures, protocols and forms necessary to carry out this code;
- (vi) Ensure that the Hemp program is in compliance with all mandatory reporting requirements outlined under the Farm Bill, the IFR, and other applicable federal law; and
- (vii) Provide a written report to Tribal Council, at least annually, on Hemp production occurring pursuant to this code, including the amount of land under cultivation, a profile of licensees, revenue generated by Hemp production, any violations of this code or other tribal law related to Hemp production currently under investigation, and any resources necessary to expand Hemp production and to improve regulation of Hemp production on tribal land.

(2) CRIT Hemp Agency Director. The Agency shall be managed and directed by the CRIT Hemp Agency Director (“Director”) who shall be appointed by the Tribal Council. The Director shall be an at-will employee, answerable to and subject to the direction of the Tribal Council.

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(3) Duties and Authority of the Director. The Director shall manage, administer, supervise and direct the affairs of the Agency. In furtherance of these duties, the Director's authority shall include:

- (i) to make all management decisions concerning the day-to-day operations of the Agency, or to delegate such decisions to a manager or managers to perform such day-to-day operating management; however, in the event of such delegation, the Director will maintain responsibility for supervising and directing the activities of such manager(s) in the exercise of his or her duties;
- (ii) to hire qualified personnel and staff to perform the duties of the Agency, and to draw upon the professional legal and accounting resources of the Tribes for consultation and assistance, where appropriate;
- (iii) to develop necessary policies, procedures, protocols, and forms necessary to carry out this code;
- (iv) make determinations as the approval or denial of licenses, enforce license requirements and conditions, and promptly report any violations to Tribal Council and tribal prosecutors; and
- (v) ensure that the Hemp program complies with all reporting requirements provided for under this code and applicable federal law.

(4) Appointment and qualifications of the Director. The Director shall be appointed by the Tribal Council and must meet the following minimum standards of eligibility:

- (i) A satisfactory background check showing no felony convictions;
- (ii) A bachelor's degree from an accredited college or university and ten (10) years of professional work experience, provided that a Tribal representative may have eight (8) years of professional work experience in lieu of a degree and the aforesaid professional work experience. The degree or work experience shall be in relevant areas, such as agriculture, governance, accounting, business, policy interpretation and/or investigation. However, it shall be in the sole discretion of the Tribal Council to determine what areas of expertise are appropriate for appointment as Director. Advanced degrees and certifications, such as Certified Public Accountant, Juris Doctorate, and Master of Business Administration are helpful, but not required;
- (iii) Demonstrated experience in reviewing and interpreting laws, regulations, policies and procedures;

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- (iv) Demonstrated knowledge of federal Indian law; and
- (v) Strong interpersonal, verbal and written communication skills.

(5) **Funding.** The Tribal Council shall fund the Agency on an annual basis from its General Fund at a level sufficient to support its execution of its duties and obligations set forth herein. If the Agency needs a budget modification during a fiscal year, it shall make its request to Tribal Council.

### **Section 1-203. Licensing.**

#### (1) License Application.

- (i) Any person producing or intending to produce Hemp on tribal lands must have a valid license prior to producing, cultivating, or storing Hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.
- (ii) Any person desiring to cultivate Hemp anywhere on tribal land shall submit to the Agency a completed Hemp grower license application at least 90 days prior to planting. The license application shall contain the following information.
  - (a) The full name, residential address, telephone number, and email address (if available) of the applicant;
  - (b) If the applicant represents a business entity, the full legal entity name of the business, the principal business location address, documentation that the business is in compliance with the Tribes' Business and Professions Code, the full name and title of the key participants, the employer identification number ("EIN") of the business, and the email address (if available) of the applicant;
  - (c) Documentation showing a valid tenancy, ownership or other legal interest in the proposed property, and that the property and applicant are otherwise in compliance with the Tribes' land code.
  - (d) Street address (if possible), legal description and geospatial location for each field, greenhouse, building, or site where Hemp will be grown, handled, processed or stored.
  - (e) A business plan and operations plan that includes at a minimum the following:
    - (1) The proposed acreage or greenhouse or indoor square footage to be

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planted or used for processing.

- (2) A description of the type of facility proposed and the anticipated or actual number of employees and the name of the proposed manager of the facility.
  - (3) A description of the intended output (i.e., raw Hemp or some Hemp product), and if the business intends to manufacture Hemp product(s), a description of the proposed Hemp products and the intended market for the products;
  - (4) A security plan which shall identify a system for accounting for Hemp plants, security systems(s) and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements;
  - (5) A list of pesticides, herbicides, and other potentially hazardous materials proposed for use and proposed precautions for applying, handling and storing the materials.
  - (6) A description and plan of all equipment and methods that will be employed to stop any noxious effects and/or impacts to adjacent uses, including assurances that minimal to no odor will be detected from outside the grow site.
  - (7) A plan for the disposal of Hemp and related byproducts.
  - (8) Source of seeds or propagules.
  - (9) A statement of previous farming and business expertise or experience.
- (f) Proof of general liability insurance and any other insurance obtained by the applicant.
- (g) Completed criminal background check report(s) for all key participants of the applicant confirming that all key participants to be covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, dated within sixty (60) days prior to the application submission date. Applicants shall submit fingerprints and pay criminal background check fees directly to CRIT Law Enforcement Services to obtain a criminal history background check report; and

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- (h) Payment of an application fee as set forth below;
- (i) A grow site registration application; and
- (j) Any other information, disclosure or consent required by tribal law or policy issued pursuant to this code or by federal regulation.

(2) **Grow Site Registration.** As a component of the Hemp grower license application, each applicant shall submit a grow site registration application on a form provided by the Tribes for each proposed grow site. Information submitted to the Tribes must include, at a minimum:

- (i) The street address (if possible), legal description and geospatial location of each field, greenhouse, building, or site where Hemp will be cultivated.
- (ii) If Hemp is cultivated or is intended to be cultivated in a field:
  - (a) the geospatial location of the grow site provided in decimal of degrees and taken at the approximate center of the row site;
  - (b) the number of square feet or acres of each grow site; and
  - (c) a map of the production area showing clear boundaries of the grow site.
- (iii) If Hemp is cultivated or is intended to be cultivated in a greenhouse or other building:
  - (a) the GPS coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building composing the grow site;
  - (b) the approximate dimension or square feet of the greenhouse or other building composing the grow site; and
  - (c) a map of the production area showing clear boundaries of the grow site.
- (iv) Any other information required by the Agency.

(3) **Acknowledgement of Terms.** By submitting an application, the applicant acknowledges and agrees to the following minimum terms and conditions, which shall be expressly contained in licenses issued by the Tribal Council:

- (i) any information provided to the Tribal Council or another entity or

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instrumentality of the Tribes may be provided to law enforcement agencies without further notice to the applicant;

- (ii) the applicant or Hemp grower shall allow and fully cooperate with any inspection and sampling of Hemp or Hemp products that the Tribes deems necessary;
  - (iii) the applicant or Hemp grower shall pay for any inspection and laboratory analysis costs that the Tribes deem necessary within thirty (30) days of the date of the invoice, provided that the Hemp grower shall not be required to pay for more than one (1) tribal inspection and associated laboratory analysis costs per year unless the applicant or Hemp grower is alleged to have violated the license or this code;
  - (iv) the applicant or Hemp grower shall submit all required reports by the applicable due-date specified by the Agency;
  - (v) The applicant or Hemp grower will comply with applicable laws rules and regulations, including but not limited to, this code, tribal law, and federal law;
  - (vi) The applicant consents to all of the licensing terms and conditions listed in the license;
  - (vii) The applicant consents to the jurisdiction of the Tribe;
- (4) License Application Processing.
- (i) Upon submission of an application, the Agency shall verify that the information in the application is accurate and complete, including one pre-licensing inspection of the grow site. Verification by the Agency shall occur within twenty-one (21) days of submission of the application. The Agency shall notify applicants that their application is complete or specify information that remains to be submitted.
  - (ii) Upon verification of the information in the application, applications shall be reviewed for compliance with code and any other applicable law within thirty (30) days.
  - (iii) The Agency shall submit their written recommendation to grant or deny the license to Tribal Council within seven (7) days.
  - (iv) Tribal Council shall make the final determination as to whether to approve or deny a license application within fourteen (14) days of receipt of the recommendation. The Agency shall notify applicants that the license has been granted or denied by certified mail and assign the successful applicant a license number.

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- (v) Applicants may appeal the denial of a license according to the procedure set forth in Section 1-307 below.
- (5) The notice that a license has been approved shall contain the following minimum information:
- (i) The contact information required for license applications contained in Section 1-203(1)(ii).
  - (ii) The hemp grower's license identification provided in a format compatible with the USDA's information sharing system.
  - (iii) Any conditions or restrictions on the license.
  - (iv) The date of expiration of the license.
  - (v) The dates of scheduled sampling(s) and inspection(s).
  - (vi) The date for submission of an application to renew the license.
  - (vii) Any other information deemed appropriate by the Agency.
- (6) All licenses shall be valid for three (3) years from the date of issuance, unless otherwise extended or revoked at an earlier date pursuant to this code or other tribal law or regulation.
- (7) Licenses cannot be assigned or transferred to another Person, unless first approved by the Director in writing.
- (8) License Conditions.
- (i) The Tribe may add conditions and/or provisions to licenses at any time, including but not limited to:
    - (a) Conditions for protection of the soil and water quality;
    - (b) Conditions restricting water use or irrigation;
    - (c) Conditions governing the disposal of plants and equipment related to Hemp production;
    - (d) Conditions providing for quality assurance of Hemp cultivated;

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- (e) Conditions protecting workers health and safety;
  - (f) Provisions that ensure the security of the Hemp production operation;
  - (g) Provisions to ensure that records are effectively maintained; and
  - (h) Provisions governing the THC-testing of Hemp crops.
- (ii) The Tribes must notify the Hemp grower of conditions added to the license after the license has issued in writing, must specify the time for compliance with the conditions and must verify confirmation of receipt by the Hemp grower.
  - (iii) Contesting license conditions.
    - (a) License conditions may be contested as impracticable or unnecessary for compliance with tribal or federal law.
    - (b) A Hemp grower may petition for review of a license condition by Tribal Council under the procedure set forth in Section 1-307.
- (9) License Modifications. A license modification is required if there is any change to the information submitted in the application including, but not limited to, sale of a business, the production, handling, or storage of Hemp in a new location, or a change in the key participants producing under a license.
- (10) Renewal. Licenses may be renewed annually or as otherwise determined by the Tribes by submitting a renewal application to the Agency no later than ninety (90) days prior to the date of the license expiration. At a minimum, the renewal application shall require the Applicant to provide updated information regarding the grow site registration, address and contact information, any citations of the applicant for violations of Hemp production licenses or tribal law and any changes to the applicant's eligibility under Section 1-204.
- (11) Revocation. The Tribes shall immediately revoke the license of a Hemp grower if the Hemp grower:
- (i) Pleads guilty to, or is convicted of, any felony related to a controlled substance;
  - (ii) Made any materially false statement with regard to their license application with a culpable mental state greater than negligence; or
  - (iii) Is found to be growing cannabis exceeding the Acceptable Hemp THC level with a culpable mental state greater than negligence or negligently violated this code three times in five years.

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(12) Suspension. The Tribes may suspend the license of a Hemp grower if the Tribes receives credible information that a licensee has either:

- (i) Engaged in conduct violating a provision of this Code; or
- (ii) Failed to comply with a written order from the Agency related to a negligent violation of this Code or violation of other applicable Tribal laws.

Any Hemp grower whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when the notice of suspension is issued without prior authorization of the Agency. Any person whose license has been suspended shall not grow hemp during the period of suspension. A suspended license may be restored after a waiting period of up to one year as determined by the Agency. A Hemp grower whose license has been suspended may be required to comply with a corrective action plan to fully restore their license.

### **Section 1-204. Persons Ineligible for Licenses.**

- (1) Any person convicted of a felony relating to a controlled substance under state or federal law shall be ineligible to produce Hemp under the Hemp program during the ten (10) year period following the date of the conviction, unless that person was already lawfully growing Hemp under the 2014 Farm Bill before December 20, 2018 and if the conviction also occurred before December 20, 2018.
- (2) A Hemp grower that negligently violates this code or other State or Tribal plan or the USDA plan three (3) times in a five (5) year period shall be ineligible to participate in the Hemp program for a period of five (5) years beginning on the date of the third violation.
- (3) Any person found to have materially falsified any information contained in an application for a hemp license shall be permanently ineligible for a license.

### **Section 1-205. Fees.**

- (1) In addition to submitting a Hemp grower license application or renewal application, each applicant shall submit the application fee set by Agency.
- (2) The Tribes may set and collect additional fees, including testing fees, in amounts that are reasonable and necessary to cover the costs of administering and enforcing the Tribes' Hemp program.
- (3) Application fees shall not cover or include the cost of obtaining and submitting a criminal background check report.

(4) The Tribe may waive the application fee for tribal enterprises or enterprises which are majority owned by a CRIT tribal member.

**Section 1-206. Inspections.**

(1) The Tribe shall conduct scheduled inspections of all Hemp growers and grow sites, at least once per growing season. The purpose of these inspections is to verify compliance with all requirements and conditions of the license issued, as well as with applicable tribal and federal law. Inspection may include sampling by tribal inspectors for testing of Hemp products THC levels or any other purpose. In addition to scheduled inspections, the Tribes shall have authority to conduct random inspections of all Hemp growers and all grow sites.

(2) Random inspections may be conducted at any time. Inspectors shall be granted unrestricted access to the grow site(s).

(3) The Tribe shall complete a report for all inspections. Any reports noting violations of the license, this code, or other applicable tribal or federal law shall be submitted to Tribal Council within forty-eight (48) hours for review.

(4) All samples collected by the Tribes shall become the property of the Tribes and no compensation shall be owed by the Tribes for such samples.

(5) The Tribes shall maintain a record of test results for all Hemp products tested for a minimum of three (3) years.

**Section 1-207. Land Use Restrictions and Site Modification.**

(1) A Hemp grower shall not cultivate Hemp on any site not listed in a valid grow site registration approved by the Tribes.

(2) Any Hemp grower that wishes to alter its grow site shall, before altering the grow site, submit to the Agency an updated legal description, geospatial location, and map specifying the proposed alterations on a form determined by the Agency. Modification of the grow site shall be considered a proposed modification of the license. No modifications to the grow site may be made without prior written approval from the Tribes.

(3) No grow site may be included in more than one (1) grow site registration at the same time, and no Hemp plant shall be included in more than one (1) grow site registration simultaneously.

**Section 1-208. Transportation Requirements.**

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(1) The Hemp grower or other person responsible for the transportation of a Hemp crop or Hemp product must ensure that the following documentation accompanies the Hemp crop or Hemp product at all times during transport:

- (i) a copy of the license that corresponds to the grow site from which the Hemp originated;
- (ii) a copy of the pre-harvest test results that corresponds to the harvest lot in transit as identified by the harvest lot identifier that accompanies the Hemp;
- (iii) a copy of a transport manifest that includes all information required to be documented by the Tribes;
- (iv) the transportation log; and
- (v) any other documentation that may be required by the Agency or federal regulations.

(2) To ensure the security of the Hemp crop or Hemp products:

- (i) The Hemp grower or employee thereof shall remain in the presence of and shall maintain control of the Hemp crops or products at all times.
- (ii) At least two people shall be present to transport Hemp crops or products to ensure their security.
- (iii) The Hemp grower shall take any other precautions specified by tribal or federal law, regulations or policy.

(3) The two people transporting the Hemp crop or product shall certify transport and delivery on the same day that the Hemp crops or products are transported and delivered.

## **CHAPTER 3. COMPLIANCE AND ENFORCEMENT**

### **Section 1-301. General.**

(1) Upon written or oral request of the Tribe, Hemp growers shall provide the Tribes' inspector immediate and unrestricted access to all plants, parts, and seeds within a grow site, whether growing or harvested, and all land, buildings and other structures used for the cultivation of Hemp, and all documents and records pertaining to the Hemp grower's Hemp business.

### **Section 1-302. Required Recordkeeping and Reporting.**

(1) Tribal Recordkeeping and Reporting:

- (i) The Agency shall retain for a period of at least three (3) calendar years, all information required to be collected in Chapter 2 of this code for every grow site approved by the Tribes.
- (ii) Hemp Grower Report. The Agency shall submit to the USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each Hemp grower under this code. If the first of the month falls on a weekend or holiday, the report shall be submitted by the first business day following the first of the month. The report shall contain:
  - (a) For each new Hemp grower who is an individual and is licensed or authorized under this code, the report shall include the individual's:
    - (i) full name;
    - (ii) license identification number;
    - (iii) business address;
    - (iv) telephone number;
    - (v) email address (if available); and
    - (vi) a legal description of the land on which the Hemp grower is producing or intends to produce Hemp including, to the extent practicable, its geospatial location.
  - (b) For each new Hemp grower that is an entity and is licensed or authorized under this code, the report shall include the entity's:
    - (i) full name;
    - (ii) license identification number;
    - (iii) principal business location address business address;
    - (iv) the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report; and
    - (v) a legal description of the land on which the Hemp grower is

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producing or intends to produce Hemp including, to the extent practicable, its geospatial location.

- (c) for each Hemp grower 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;
  - (d) the status of a license or other required authorization from the Tribes including any changes to that status.
  - (e) the period covered by the report; and
  - (f) indication that there were no changes during the current reporting cycle, if applicable.
- (iii) Hemp Disposal Report. If a Hemp grower has produced cannabis exceeding the Acceptable Hemp THC level, the cannabis shall be disposed of in accordance with Section 1-304. The Agency shall submit to the USDA, by the first of each month, a report notifying the USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plans and materials. If the first of the month falls on a weekend or holiday, the report shall be submitted by the first business day following the first of the month. The report shall contain:
- (a) Name and address of the Hemp grower.
  - (b) The Hemp grower's license or authorization identifier.
  - (c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.
  - (d) Information on the agent handling the disposal.
  - (e) Disposal completion date; and
  - (f) Total acreage.
- (iv) Annual Report. The Agency shall submit an annual report to USDA. The report shall be submitted by December 15 of each year and contain the following information:
- (a) Total planted acreage;

(b) Total harvested acreage; and

(c) Total acreage disposed.

(2) Hemp Grower Recordkeeping and Reporting:

- (i) Hemp growers must report any changes of contact information to the Tribes in writing within fourteen (14) days of the change.
- (ii) **Planting Report:** Within fourteen (14) days after planting any Hemp, each Hemp grower shall submit, on a form provided by the Agency, a planting report that includes the GPS coordinates and a map showing the location and actual acreage or square feet of Hemp planted.
- (iii) **Pre-Harvest Notification:** At least fourteen (14) days prior to harvest, each Hemp grower shall submit a pre-harvest notification, on a form provided by the Agency, that includes the projected harvest date(s) and location(s) of each variety of Hemp cultivated within a grow site. A Hemp grower must notify the Agency immediately of any changes in the reported harvest date(s) in excess of seven (7) days.
- (iv) **Post-Harvest Report:** Within fourteen (14) days post-harvest, each Hemp grower shall submit a Post-harvest report to the Agency, on a form provided by the Agency that includes the actual harvest date(s) and location(s) of each variety of Hemp harvested within a grow site. A Hemp grower is not required to document the removal of male Hemp plants on a post-harvest report provided that the male Hemp plants are destroyed or utilized on the grow site and are not transferred or sold.
- (v) **Test Results Report:** Each Hemp grower must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its grow site reports the test results for all samples tested to USDA. The test results report shall contain the following information for each sample tested:
  - (a) Hemp grower's license identification number;
  - (b) Name of Hemp grower;
  - (c) Business address of Hemp grower;
  - (d) Lot identification number for the sample;
  - (e) Name and DEA registration number of laboratory;

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- (f) Date of test and report;
  - (g) Identification of a retest; and
  - (h) Test result.
- (vi) Reporting Hemp Crop Acreage to the USDA Farm Service Agency. All Hemp growers must report Hemp crop acreage to the USDA Farm Service Agency (“FSA”) pursuant to USDA guidelines and shall provide, at minimum, the following information:
- (a) Street address and geospatial location of the grow site;
  - (b) Acreage dedicated to the production of Hemp, or greenhouse or indoor square footage dedicated to the production of hemp; and
  - (c) License identification number.
- (vii) Transportation Log. Hemp growers must maintain a transportation log documenting each occurrence when Hemp crops are transported whenever to or from a grow site. The transportation log shall contain the following information:
- (a) dates and times of transportation and delivery of Hemp crops and products, the names of individuals transporting, the manager on duty, any loss or damage to the crop during transport or delivery, and certification of the recipient of the Hemp crop or product as well as the manager of the recipient.
  - (b) Transportation logs shall be kept up to date daily and shall be maintained for a period of three (3) years from the last growing season. The Tribes may inspect the transportation log at any time.
  - (c) The Hemp grower shall give the Tribe access to the transportation log at any time upon request.
- (viii) A Hemp grower must retain all documentation of sampling and testing for at least three (3) years in a manner such that it can be readily provided to the Tribes upon request.
- (ix) The applicant or Hemp grower must report to the Tribes any felony convictions relating to controlled substances under state, federal, or tribal law within five (5) business days of receiving notice of such conviction.

- (x) Upon revocation of a license or dissolution of a Hemp grower, the Hemp grower is required either to maintain a copy of all licenses, sampling and testing results and transportation logs in a secure location, the address for which is provided to the Agency for a period of three (3) years or provide them to the Agency.

**Section 1-303. Grow Site Sampling and Testing for THC-level.**

- (1) Prior to Harvest:
  - (i) Within fifteen (15) days of the anticipated harvest of cannabis plants, all Hemp growers must arrange for and ensure that an Agency official or representative collects samples from the flower material of such cannabis plants for THC-level testing at a DEA-registered laboratory.
  - (ii) The method used for sampling from the flower material of the cannabis plant shall be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the grow site would exceed the Acceptable Hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents homogeneous composition of the grow site.
  - (iii) During a scheduled sample collection, the Hemp grower or an authorized representative of the Hemp grower shall be present at the grow site.
  - (iv) Representatives or officials of the sampling agency shall be provided with complete and unrestricted access during business hours to all Hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.
  - (v) Hemp growers shall not harvest the cannabis crop prior to samples being taken.
  - (vi) For each sample tested pursuant to this chapter, the Hemp grower shall obtain from a laboratory a certificate of analysis that includes, at a minimum, the following information:
    - (a) General information identifying that the Hemp that is the subject of the certificate of analysis is the product of a sample tested by the independent testing laboratory;
    - (b) The date the Hemp was sampled, the date testing was performed, and methodology used to analyze the sample;

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- (c) The THC concentration contained in the test sample; and
  - (d) A statement indicating whether the sample contained a THC concentration of not more than the Acceptable Hemp THC level.
- (2) Standards Detecting THC Concentration Levels:
  - (i) Analytical testing for purposes of detecting the THC concentration levels in the flower material of the cannabis plant shall meet the following standard:
    - (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 analytical performance; and
    - (d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of Section 1-303(1)(ii).
  - (ii) At a minimum, analytical testing of samples for THC concentration levels must use post-decarboxylation or other similarly reliable methods approved by the USDA. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this paragraph include, but are not limited to, gas or liquid chromatography with detection.
  - (iii) The total THC concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.
  - (vi) Any sample test result exceeding the Acceptable Hemp THC level shall be conclusive evidence that the grow site represented by the sample is not in compliance.
- (3) Responsibility to Harvest After Testing.

- (i) Hemp growers shall harvest Hemp crops not more than fifteen (15) days following the date of sample collection.
- (ii) If a Hemp grower fails to complete harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the lot shall be required to be submitted for testing.
- (iii) Harvested lots of Hemp plants shall not be commingled with other harvested lots or other material without prior written permission Agency.
- (iv) Hemp crops that meet Acceptable Hemp THC level may enter the stream of commerce.
- (v) Grow sites tested and not certified by the DEA-registered laboratory not exceeding the Acceptable Hemp THC level may not be further handled, processed, or enter the stream of commerce and the licensee shall ensure the lot is disposed of in accordance with Section 1-304. Any Hemp grower may request additional testing if it is believed that the original THC concentration level test results were in error.

**Section 1-304. Procedure for Disposal of Noncompliant Plants and Products.**

(1) Cannabis plants testing higher than the Acceptable Hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (“CSA”), 21 U.S.C § 801 *et. seq.* and must be disposed of in accordance with tribal law, the CSA, and DEA Regulations found at 21 CFR § 1317.15.

(2) Hemp growers must notify the Agency of their intent to dispose of non-conforming plants and verify disposal by submitting appropriate documentation and evidence to the Agency, including:

This documentation and evidence shall include:

- (a) Name and address of the Hemp grower;
- (b) The Hemp grower’s license or authorization identifier;
- (c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject disposal;
- (d) Information on the agent handling the disposal;

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- (e) Disposal completion date; and
- (f) Total acreage.

The Agency shall submit to the USDA, by the first of each month, a report notifying the USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials, in accordance with Section 1-302(1)(iii).

### **Section 1-305. Violations.**

- (1) A violation of this Chapter shall be subject to enforcement in accordance with this section, tribal law, and all applicable federal, state and local laws, regulations, rules and other requirements.
- (2) Negligent Violation:
  - (i) A Hemp grower shall be subject to penalties if the Tribes determine that the Hemp grower has negligently violated the requirements or conditions of its license or this code, including by negligently:
    - (a) providing an incomplete or inaccurate description of land on which the Hemp grower cultivates Hemp;
    - (b) failing to obtain a license or other required authorization from the Tribes as applicable; and
    - (c) producing *Cannabis sativa L.* with a THC concentration of more than the Acceptable Hemp THC level. Except a Hemp grower shall not have committed a negligent violation under this paragraph if they make reasonable efforts to grow Hemp and the resulting *cannabis* product has a THC concentration of more than the Acceptable Hemp THC level but does not have a THC concentration of more than 0.5 percent on a dry weight basis.
  - (ii) A Hemp grower described in this section shall comply with a corrective action plan established by the Agency to correct the negligent violation, including:
    - (a) a reasonable date by which the Hemp grower shall correct the negligent violation; and
    - (b) a requirement that the Hemp grower shall periodically report to the Agency on the compliance of the Hemp grower with this code for a period

of not less than the next two (2) calendar years.

- (iii) A Hemp grower that negligently violates this code shall not, as a result of that violation, be subject to any criminal enforcement action by the federal government or any state government, tribal government, or local government.
  - (iv) A Hemp grower that negligently violates this code three (3) times in a five (5) year period shall be ineligible to produce Hemp under the Hemp program for a period of five (5) years beginning on the date of the third violation.
  - (v) The Agency shall conduct periodic inspections to determine if corrective action plans put in place by the Agency to correct negligent violations have been implemented as submitted.
- (3) Other Violations:
- (i) If the Tribes determine that a Hemp grower on tribal land has violated this code with a culpable mental state greater than negligence, the Hemp grower may be subject to penalties under tribal law as well as federal, state or local laws, and the Tribes shall immediately report the Hemp grower to:
    - (a) the Chief of Police for CRIT Law Enforcement Services; and
    - (b) the United States Attorney General.
  - (ii) Section 1-305(2) shall not apply to such violations.

**Section 1-306. Penalties and Remedies.**

- (1) Negligent Violations.
  - (i) Every person found to have negligently violated this code shall be subject to punishment by a fine of not more than one thousand dollars (\$1,000.00).
  - (ii) Each day during which any such violation shall continue after the Tribes have given written or oral notice to the person in violation, shall constitute a separate violation, punishable as herein provided.
  - (iii) A Hemp grower described in this Section shall comply with a corrective action plan established by the Tribes to correct the negligent violation as provided for in Section 1-305 above.
- (2) Other Violations.

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- (i) In accordance with Section 1-305(3), all persons found to have violated this code with a culpable mental state greater than negligence shall be immediately reported to the Chief of Police for CRIT Law Enforcement Services and the United States Attorney General.
- (ii) Every person found to have violated this code with a culpable mental state greater than negligence shall be punished by a fine of (\$2,000.00), the amount of tribal property harmed or destroyed, the extent of liability incurred by the Tribes as a result of the violation, or whichever is greatest.
- (iii) Each day during which any such violation shall continue after the Tribes have given written or oral notice to the person in violation, shall constitute a separate violation, punishable as herein provided.
- (iv) Every person found to have violated the provisions of this code with a culpable mental state greater than negligence shall forfeit any licenses under this code and shall be ineligible to obtain a license under this code for a period of ten (10) years.
- (v) The Tribes retain the authority to bring suit against any person to enjoin any activity relating to Hemp production in violation of a license or this code, other tribal, state or federal law, and to collect any delinquent fees, interest or penalties in any court of competent jurisdiction. The court may award interest, costs, and attorney's fees on any judgment.
- (vi) This section shall not be construed to authorize the imposition of any criminal penalty against any person who, because of his status as a non-Indian or otherwise, pursuant to federal law is not subject to the imposition of criminal penalties by the Tribes.

### **Section 1-307. Appeals.**

- (1) Denial, suspension or revocation of a license may be appealed to the Tribal Court within twenty (20) days. The Hemp grower or applicant is responsible for paying all costs associated with an appeal.
- (2) The Tribal Court shall review the appeal at a hearing at which the Hemp grower, the Tribe and any other necessary party is present and consistent with the Court's Rules of Civil or Criminal Procedure.
- (3) The Tribal Court may affirm the denial, suspension or revocation of a license based upon a finding that a decision of the Agency or Tribal Council was arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance

with the law or upon any other basis permitted under tribal law.

(4) The Tribal Court may not assess damages or costs against the Tribes, any tribal entity or any of their subsidiaries.

(5) For the limited purpose of Section 1-307 only, the Tribes waive their immunity from suit.

**CHAPTER 4. OTHER PROVISIONS**

**Section 1-401. Sovereign Immunity.**

Nothing in this code, or an arbitration, a contract or other agreement, or any action or inaction relating to, directly or indirectly, tribal hemp, shall constitute a waiver, in whole or in part, of the sovereign immunity of the Tribes, any tribal entity, or any of their subsidiaries, departments, affiliates, agents, officers or employees, beyond the terms of any express limited waiver agreed to therein.

**Section 1-402. Severability.**

If any section, provision, phrase, addition, word, sentence or amendment of this article or its application to any Person is held invalid for any reason whatsoever, such invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid applications and to that end, the provisions of this code are declared severable.

**Section 1-403. Effective Date.**

This code shall be effective immediately upon enactment.

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