

**Title XLIII
(43)
INDUSTRIAL HEMP REGULATION CODE**

ORDINANCE NO. 2021-43-0001

Standing Rock Sioux Tribal Code of Justice



RESOLUTION NO. 182-21

**Approved August 3, 2021
by
Standing Rock Sioux Tribal Council**

RESOLUTION NO. 182-21

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribe Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a) is empowered to negotiate with Federal, State and Local governments and others on behalf of the Tribe; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(c) is empowered to promote and protect the health, education, and general welfare of the members of the Tribe and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 5, shall post all proposed ordinances introduced as a Tribal Council Meeting for not less than ten days prior to final adoption by the Tribal Council for public inspection. All enacted ordinances shall be made available to the Local District Councils; and

WHEREAS, the Standing Rock Sioux Tribe faces significant challenges in alleviating poverty and its related social ills on the Standing Rock Sioux Reservation, and an important part of the Tribe's efforts to meet those challenges involve providing broader economic development opportunities; and

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

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

WHEREAS, the Tribe desires to adopt and enact Title XLIII (43) Industrial Hemp Regulation Code of the Standing Rock Code of Justice to authorize the growth and handling of industrial hemp on the Reservation, as a matter of Tribal law, and to provide a sound regulatory framework for the safety of industrial hemp crops and the Reservation community; and

WHEREAS, the proposed amendments were introduced at a Tribal Council Meeting and posted for public comment for not less than ten days pursuant to the amended Constitution of the Standing Rock Sioux Tribe; Article IV, Section 5.

NOW THEREFORE BE IT RESOLVED, the Tribal Council hereby approves the enactment of Ordinance 2021-43-001 approving and enacting Title XLIII (43) Industrial Hemp Regulation Code; and

BE IT FUTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION


We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 14 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 3rd day of AUGUST, 2021, and that the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 4 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 3RD DAY OF AUGUST, 2021.

ATTEST:



Susan Agard, Secretary
Standing Rock Sioux Tribe


Mike Faith, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Standing Rock Sioux Tribe Code of Justice

Title --

Industrial Hemp Regulation

Chapter 1. Findings

101. Findings.

The Standing Rock Sioux Tribal Council finds:

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

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

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

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

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

Chapter 2. Definitions

201. Definitions.

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

delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is .35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp TCH level.

- (b) "Commissioner" means the Commissioner of the Standing Rock Sioux Tribe Department of Agriculture.
- (c) "Certified Seed" means seed that is recognized by the Commissioner as having been certified by a recognized organization as producing industrial hemp containing no more than 0.3% THC on a dry-weight basis.
- (d) "Chairman" means the Chairman of the Standing Rock Sioux Tribe.
- (e) "Department" means the Standing Rock Sioux Land Management Department.
- (f) "Grow" means planting, growing, cultivating, or selling industrial hemp for research or commercial purposes, including for processing.
- (g) "Grower" means an Indian who grows industrial hemp.
- (h) "Handle" means receiving or using industrial hemp for processing into commodities, products, or agricultural hemp seed.
- (i) "Handler" means an Indian who handles or manufactures industrial hemp.
- (j) "Indian" means any member of the Standing Rock Sioux Tribe, or any other federally recognized tribe.
- (k) "Industrial hemp" means:
 - (1) The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration on a dry weight basis of not more than the acceptable hemp THC level.
- (l) "Licensee" means an Indian who has been issued a license by the Commissioner pursuant to this Title.
- (m) "Tribal Council" means the Standing Rock Sioux Tribal Council.

Chapter 3. Standing Rock Sioux Commissioner of Agriculture

301. Establishment.

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

302. Commissioner.

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

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

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

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

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

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

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

Chapter 4. Authorization of Industrial Hemp under Tribal law

401. Authorization.

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

(b) Any person desiring to grow, handle, transport, produce, or sell industrial hemp on the Reservation must obtain an industrial hemp license from the Commissioner and comply with the provisions of this Title. A license under this Title shall be site-specific, and shall

authorize industrial hemp production only at the locations specified in the license application and approved by the Commissioner.

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

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

(11) an application fee of \$500; and

(12) an additional fee of \$50 for each background check under subsection (c)(10) of this section.

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

Chapter 5. Licensing

501. Licensing.

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

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

(c) No application shall be granted if an applicant, or any person listed in response to section 401(c)(1)-(c)(4) of this Title has been convicted of a state, federal, or tribal felony or drug-related misdemeanor within the last 10 years.

(d) No application shall be granted if the application is incomplete, if an applicant has submitted any false or misleading statement on the application, or if the applicant has failed to demonstrate to the satisfaction of the Commissioner that he or she will adequately comply with the provisions of this Title and ensure the integrity of the hemp crop at all times.

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

applicable, and the Tribe shall not be responsible for any non-compliance by the licensee or others with respect to such other laws.”

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

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

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

Chapter 6. Continuing Obligations of Licensees

601. Record-Keeping and Reporting.

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

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

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

(d) Licensed growers must notify the Commissioner of an intent to change the location of the land area on which the licensee conducts industrial hemp cultivation, storage or both, by submitting an updated legal description, GPS coordinates, and map specifying the proposed alteration. Upon receipt of the notice of intent to alter the land area, the Commissioner shall notify the licensee whether it may cultivate or store industrial hemp on the altered land area.

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

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

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

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

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

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

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

602. Access and Testing.

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

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

Commissioner shall be authorized, after an initial year, to determine the appropriate cost for testing.

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

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

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

Chapter 7. Violations, Sanctions for Noncompliance

701. Violations; Penalties

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

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

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

(d) "Negligent violation of this Title" means:

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

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

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

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

(5) violates any provision of this Title;

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

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

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

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

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

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