

# **NOTICE OF PROPOSED RULE MAKING- SEEKING PUBLIC COMMENT**

**The publication of this notice on January 30, 2020 begins a thirty day public comment period. During the next thirty days, anyone with an interest in the below amendment to the Chippewa Cree Tribal Law and Order Code can submit a written comment offering feedback on the amendment. The written feedback must be submitted either via e-mail to [leannmontes@hotmail.com](mailto:leannmontes@hotmail.com) or [bigknifej05@gmail.com](mailto:bigknifej05@gmail.com) via mail to:**

**Chippewa Cree Tribe  
Attn: CCT-OAG  
96 Clinic Road North  
Box Elder, Montana 59521**

**Please direct all feedback and questions to the e-mail address or mailing address listed above.**

BE IT ENACTED BY THE CHIPPEWA CREE TRIBE OF THE ROCY BOY'S INDIAN RESERVATION, MONTANA:

The Chippewa Cree Tribal Law & Order Code, is amended by adding Title 23, relating to the production and regulation of hemp, to read as follows:

**PART 1 - TRIBAL HEMP PLAN**

**Section 101. Definition.** In this Title, “hemp” means the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant 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.

**Section 102. Legislative Intent.** It is the intent of the Chippewa Cree Business Committee that the Chippewa Cree Tribe have primary regulatory authority over the production of hemp within the Reservation.

**Section 103. Tribal Plan.**

- (1) The Tribe, acting through its Tribal Business Committee, will develop a tribal plan to monitor and regulate the production of hemp within the Reservation. The plan must comply with 7 U.S.C. Section 1639p.
- (2) The Tribe will submit the plan developed under Subsection (1) to the secretary of the United States Department of Agriculture as the Tribe’s plan for monitoring and regulating the production of hemp as provided by 7 U.S.C. Section 1639p.
- (3) If a plan submitted under Subsection (2) is not approved by the secretary of the United States Department of Agriculture, the Tribe, acting through its Tribal Business Committee, will amend the plan as needed to obtain approval and submit an amended plan.
- (4) The Tribe will, as necessary, seek technical assistance from the secretary of the United States Department of Agriculture in developing the plan under this section.

**Section 104. Regulations.**

- (1) The Tribe will adopt regulations and procedures necessary to implement, administer, and enforce this Code.
- (2) Rules adopted under subsection (1) must:

- (A) prescribe sampling, inspection, and testing procedures, including standards and procedures for the calibration of laboratory equipment, to ensure that the delta-9 tetrahydrocannabinol concentration of hemp plants cultivated within the Reservation is not more than 0.3 percent on a dry weight basis; and
- (B) provide due process consistent with tribal law, including an appeals process, to protect license holders from the consequences of imperfect test results.

**PART 2 - GENERAL PROVISIONS**

**Section 201. Definitions.** In this Code:

- (1) “Attorney General” means the Office of Attorney General of the Tribe.
- (2) “Business Committee” means the Business Committee of the Tribe, as the governing body of the Tribe as defined and described in the Constitution and Bylaws of the Tribe.
- (3) “Cultivate” means to plant, irrigate, cultivate, or harvest a hemp plant.
- (4) “Department” means \_\_\_\_\_. (TBD at a later date).
- (5) “Governing person” means a person serving as the governing body or authority of an entity.
- (6) “Handle” means to possess or store a hemp plant:
  - (A) on premises owned, operated, or controlled by a license holder for any period of time; or
  - (B) in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated, or controlled by a license holder to a premises owned, operated, or controlled by another license holder.
- (7) “Hemp” has the meaning assigned by Section 101.
- (8) “Law Enforcement” means the law enforcement agency of the Tribe.
- (9) “License” means a hemp grower’s license issued under this Code.
- (10) “License holder” means an individual or business entity holding a license.
- (11) “Lot” means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.
- (12) “Person” means an individual or entity, unless otherwise indicated.
- (13) “Reservation,” as defined by Article I of the Constitution of the Chippewa Cree Indians of the Rocky Boy’s Reservation, means “the territory within the Rocky Boy’s Reservation as

established by Act of September 7, 1916 (139 Stat. 739), amending the Act of February 11, 1915 (38 Stat. 807), in the State of Montana,” and such lands as have been or may hereafter be acquired and added the Reservation and are “Indian country” as defined by 18 U.S.C. § 1151.

**Section 202. Severability.**

- (1) A provision of this Code or its application to any person or circumstance is invalid if the secretary of the United States Department of Agriculture determines that the provision or application conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the tribal plan submitted under this Code.
- (2) The invalidity of a provision or application under Subsection (1) does not affect the other provisions or applications of this Code that can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

**PART 3 - POWERS AND DUTIES OF DEPARTMENT**

**Section 301. Rules and Procedures.** The Department may adopt any rules or procedures necessary to administer the tribal plan submitted under this Code.

**Section 302. Fees.**

- (1) The Department will set and collect:
  - (A) an application fee for an initial license in an amount not to exceed \$100;
  - (B) a license renewal fee in an amount not to exceed \$100;
  - (C) a participation fee for each location described by Section 403(1)(A) and each location added after the application is submitted in an amount not to exceed \$100;
  - (D) a site modification fee for each change to a location described by Section 403(1)(A) in an amount not to exceed \$500; and
  - (E) a collection and testing fee for each preharvest test or postharvest test if performed by the Department in an amount not to exceed \$300.
- (2) A fee set by the Department under this section may not exceed the amount necessary to administer this Code. The Tribal Business Committee may authorize the Department to collect a fee described by subsection (1) in an amount greater than the maximum amount provided by that subsection as necessary to cover the Department’s costs of administering this Code.
- (3) The Department may not set or collect a fee associated with the cultivation of hemp that is not listed in subsection (1).
- (4) Fees collected by the Department under this Code are not refundable and may be appropriated only to the Department for the purpose of administering this Code.

**Section 303. Inspections.**

- (1) The Department may randomly inspect land where hemp is grown to determine whether hemp is being cultivated in compliance with this Code. The Department may enter onto land described by Section 403(1)(A), conduct inspections, and collect and test plant samples.
- (2) Using participation fees set and collected under Section 302(1)(C), the Department will pay the cost of inspections under this section.
- (3) Law Enforcement may inspect, collect samples from, or test plants from any portion of a lot to ensure compliance with this Code. A license holder will allow Law Enforcement access to the lot and the property on which the lot is located for purposes of this subsection.
- (4) If, after conducting an inspection or performing testing under this section, the Department or Law Enforcement determines any portion of a lot is not compliant with this Code, the Department or the Law Enforcement will report the license holder to the other department and to the Chippewa Cree Business Committee.

**Section 304. Sample Collection and Testing.** The Department may collect samples and perform testing or contract with a laboratory for the performance of that collection and testing on behalf of the Department. A test performed by a laboratory on behalf of the Department is considered to be performed by the Department for purposes of this Code.

**Section 305. Shipping Certificate or Cargo Manifest.**

- (1) The Department will develop a shipping certificate or cargo manifest which the Department will issue to a license holder in connection with the transportation of a shipment of hemp plant material originating within the Reservation.
- (2) A certificate or manifest developed under Subsection (1) must include a unique identifying number for the shipment and the Department's contact information to allow Law Enforcement during a roadside inspection of a motor vehicle transporting the shipment to verify that the shipment consists of hemp cultivated in compliance with this Code.

**PART 4 - HEMP GROWER'S LICENSE**

**Section 401. License Required.** A person or the person's agent may not cultivate or handle hemp within the Reservation or transport hemp outside of the Reservation unless the person holds a license under this Code.

**Section 402. License Ineligibility.**

- (1) An individual who is or has been convicted of a felony relating to a controlled substance under federal law, tribal law or the law of any state may not, before the 10th anniversary of the date of the conviction:

- (A) hold a license under this Code; or
  - (B) be a governing person of a business entity that holds a license under this Code.
- (2) The Department may not issue a license under this Code to a person who materially falsifies any information contained in an application submitted to the Department under Section 402.

**Section 403. Application: Issuance.**

- (1) A person may apply for a license under this Code by submitting an application to the Department on a form and in the manner prescribed by the Department. The application must be accompanied by:
- (A) a legal description of each location where the applicant intends to cultivate or handle hemp and the global positioning system coordinates for the perimeter of each location;
  - (B) written consent from the applicant or the property owner if the applicant is not the property owner allowing the Department or Law Enforcement to enter onto all premises where hemp is cultivated or handled to conduct a physical inspection or to ensure compliance with this Code and regulations adopted under this Code;
  - (C) the application fee; and
  - (D) any other information required by Department rule.
- (1) The Department will issue a license to a qualified applicant not later than the 30th day after the date the Department receives the completed application and the required application fees.

**Section 404. Term; Renewal.**

- (1) A license is valid for one year and may be renewed as provided by this section.
- (2) The Department will renew a license if the license holder:
- (A) is not ineligible to hold the license under Section 402;
  - (B) submits to the Department the license renewal fee; and
  - (C) does not owe any outstanding fee described by Section 302.

**Section 405. Revocation.** The Department will revoke a license if the license holder is convicted of a felony relating to a controlled substance under federal law, tribal law or the law of any state.

**PART 5 – TESTING**

**Section 501. Testing Laboratories.**

- (1) Subject to Subsection (2), testing under this Code or Section 303 must be performed by:
  - (A) the Department; or
  - (B) an independent testing laboratory registered under Section 502.
- (2) To perform testing under this Code, a laboratory described by Subsection (1) must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.
- (3) A license holder will select a laboratory described by Subsection (1) to perform preharvest or postharvest testing of a sample taken from the license holder's lot. A license holder may not select an independent testing laboratory under Subsection (1)(B) unless the license holder has:
  - (A) no ownership interest in the laboratory; or
  - (B) less than a 10 percent ownership interest in the laboratory if the laboratory is a publicly traded company.
- (4) A license holder must pay the costs of preharvest or postharvest sample collection and testing in the amount prescribed by the laboratory selected by the license holder.
- (5) The Department will recognize and accept the results of a test performed by an independent testing laboratory described by Subsection (1). The Department will require that a copy of the test results be sent by independent testing laboratory directly to the Department and the license holder.
- (6) The Department will notify the license holder of the results of the test not later than the 14th day after the date the sample was collected under Section 504 or the date the Department receives test results under Subsection (5).

**Section 502. Registration of Independent Testing.**

- (1) The Department will register independent testing laboratories authorized to conduct testing under Section 501(3).
- (2) A laboratory is eligible for registration if the laboratory submits to the Department proof of accreditation by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and any required fee.
- (3) The Department will annually prepare a registry of all independent testing laboratories registered by the Department and make the registry available to license holders.
- (4) The Department may charge a registration fee to recover the costs of administering this section.

**Section 503. Preharvest Testing Required.**

- (1) A license holder may not harvest a hemp plant or plant intended or believed to be hemp unless a representative sample of plants from the lot where the plant is grown is collected before harvest and subsequently tested using post-decarboxylation, high-performance liquid chromatography, or another similarly reliable method to determine the delta-9 tetrahydrocannabinol concentration of the sample in the manner required by this Code.
- (2) For purposes of Subsection (1), a representative sample of plants from a lot consists of cuttings taken from at least five plants throughout the lot.
- (3) A laboratory performing preharvest testing under this section will homogenize all the cuttings in the sample and test the delta-9 tetrahydrocannabinol concentration of a random sample of the homogenized material.
- (4) This section does not prohibit a license holder from harvesting plants immediately after a preharvest sample is collected.

**Section 504. Preharvest Sample Collection.**

- (1) A license holder will notify the Department at least 20 days before the date the license holder expects to harvest plants from a lot in the manner prescribed by Department rule.
- (2) A sample must be collected by the Department or another entity described by Section 501(1) for purposes of preharvest testing under Section 503.
- (3) The Department by rule may prescribe reasonable procedures for submitting a preharvest sample collected under this section to a testing laboratory selected by the license holder.

**Section 505. False Laboratory Report; Criminal Offense.**

- (1) A person commits an offense if the person, with the intent to deceive, forges, falsifies, or alters the results of a laboratory test required or authorized under this Code.
- (2) An offense under Subsection under Title IV, Public Security, Chippewa Cree Law and Order Code.

**PART 6 – HARVEST AND USE OR DISPOSAL OF PLANTS**

**Section 601. Harvest.**

- (1) A license holder will harvest the plants from a lot not later than the 20th day after the date a preharvest sample is collected under Section 504, unless field conditions delay harvesting or the Department authorizes the license holder to delay harvesting. This subsection does not prohibit the license holder from harvesting the plants immediately after the preharvest sample is collected.
- (2) A license holder may not sell or use harvested plants before the results of a preharvest and, if applicable, postharvest test performed on a sample representing the plants are received. If the test



results are not received before the plants are harvested, the license holder will dry and store the harvested plants until the results are received.

- (3) A license holder may not commingle harvested plants represented by one sample with plants represented by another sample until the results of the tests are received.

**Section 602. Use or Disposal of Harvested Plants.**

- (1) If the results of a preharvest or postharvest test performed on a sample show a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, the license holder may sell or use the plants represented by the sample for any purpose allowed by applicable law.
- (2) If the results of a preharvest and, if applicable, postharvest test performed on a sample show a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis:
  - (A) the license holder will dispose of or destroy all plants represented by the sample:
    - (i) in the manner prescribed by federal law; or
    - (ii) in a manner approved by the Department that does not conflict with federal law; or
  - (B) if the Department determines the plants represented by the sample reached that concentration solely as a result of negligence, the license holder is subject to Section 706(3) and may:
    - (i) trim the plants until the delta-9 tetrahydrocannabinol concentration of the plants is not more than 0.3 percent on a dry weight basis and dispose of the noncompliant parts of the plants in a manner approved by the Department;
    - (ii) process the plants into fiber with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis and dispose of any remaining parts of the plants in a manner approved by the Department; or
    - (iii) take any other corrective action consistent with federal regulations adopted under 7 U.S.C. Chapter 38, Subchapter VII.

**PART 7 – TRANSPORTATION REQUIREMENTS**

**Section 701. Policy.** It is the policy of the Tribe to not interfere with the interstate commerce of hemp or the transshipment of hemp through the Reservation.

**Section 702. Interstate Transportation.** To the extent of a conflict between a provision of this Code and a provision of federal law involving interstate transportation of hemp, including a United States Department of Agriculture regulation, federal law controls and conflicting provisions of this Code do not apply.

**Section 703. Department Rules.** The Department, in consultation with Law Enforcement, may adopt rules regulating the transportation of hemp within the Reservation to ensure that illegal marihuana is not transported into or through the Reservation disguised as legal hemp.

**Section 704. Documentation; Shipping.**

- (1) A person may not transport hemp plant material within the Reservation unless the hemp:
  - (A) is produced in compliance with:
    - (i) a state or tribal plan approved by the United States Department of Agriculture under 7 U.S.C. Section 1639p; or
    - (ii) a plan established under 7 U.S.C. Section 1639q if the hemp was cultivated in an area where that plan applies; and
  - (B) is accompanied by:
    - (i) a shipping certificate or cargo manifest issued under Section 305 if the hemp originated within the Reservation; or
    - (ii) documentation containing the name and address of the place where the hemp was cultivated and a statement that the hemp was produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII, if the hemp originated outside the Reservation.

**PART 8 – ENFORCEMENT; PENALTIES**

**Section 801. Penalty Schedule.** The Tribal Business Committee will adopt a schedule of sanctions and penalties for violations of this Code that does not conflict with 7 U.S.C. Section 1639p(e).

**Section 802. Negligent Violations by License Holder.**

- (1) If the Department determines that a license holder negligently violated this Code or a rule adopted under this Code, the Department will enforce the violation in the manner provided by 7 U.S.C. Section 1639p(e).
- (2) A license holder described by Subsection (a) is not subject to a civil, criminal, or administrative enforcement action other than an enforcement action provided by this Code.
- (3) A license holder who violates this Code by cultivating plants described by Section 602(2)(B):
  - (A) must comply with an enhanced testing protocol developed by the Department;
  - (B) will pay a fee in the amount of \$500 for each violation to cover the Department's costs of administering the enhanced testing protocol; and

- (C) will be included on a list maintained by the Department of license holders with negligent violations.
- (4) A person who negligently violates this Code three times in any five-year period may not cultivate, process, or otherwise produce hemp within the Reservation before the fifth anniversary of the date of the third violation. The Department will include each person subject to this subsection on a list of banned producers.

**Section 803. Other Violations by License Holder.** If the Department suspects or determines that a license holder violated this Code or regulation adopted under this Code with a culpable mental state greater than negligence, the Department will immediately report the license holder to:

- (1) the United States attorney general; and
- (2) the Chippewa Cree Business Committee or authorized representative, who may:
  - (A) investigate the violation;
  - (B) institute proceedings for injunctive or other appropriate relief on behalf of the Tribe; or
  - (C) report the matter to Law Enforcement and any other appropriate law enforcement agency.