

**TITLE 33
TOBACCO PRODUCT CONTROL AUTHORITY**

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Section 33-1-1. Title.

This Ordinance shall be entitled the “FSST Tobacco Product Control Authority Ordinance” (herein, the “Ordinance”).

Section 33-1-2. Authority.

The Executive Committee of the Flandreau Santee Sioux Tribe enacts this Ordinance pursuant to the authority vested in it by Article III, Section (3) and VIII, Section 1(g) of the Tribe’s Constitution, to appoint boards as may be deemed necessary and to charter subordinate economic organizations for economic purposes, and to delegate to such organizations, or to any subordinate boards or officials of the Tribe, powers of the Tribe.

Section 33-1-3. Findings.

(a) The Tribe, acting through the Executive Committee and designated agencies of the Tribal government, exercises its inherent sovereignty to promulgate and execute ordinances governing and regulating the conduct of all person on the Reservation.

(b) The Constitution of the Tribe confirms the sovereign duty and responsibility of the government established by the Tribe’s members to exercise the right of local self-government and to promote the welfare of the Tribe.

(c) These rights include establishing subordinate governmental authorities for the economic purpose of benefiting the general welfare of the tribal community.

(d) The Tribe has a long history of providing benefits to the tribal community through exercising its inherent sovereign authority. This inherent authority includes Tribal tax and regulatory authority, exclusive of states, of tribal-value-added tobacco products sold within Indian country.

(e) The benefits received through subordinate Tribal authorities exercising the Tribe’s inherent tax and regulatory sovereign authority serves the social, economic, educational, and health needs of the tribal community, helps advance the sovereignty and cultural integrity of the Tribe, and supports those services found in the Flandreau Santee Sioux Tribal Tax Act, Title 23, section 1.3.

(f) The Tribe, and not the federal government, is in the best position to determine and meet the needs of the Tribe’s members. Services provided by the Federal government to the Tribe are often inadequate to meet these needs. Further, due to the nature of Tribal land holdings, the Tribe does not have a real-property tax base to help fund essential governmental services.

(g) The Executive Committee is committed to enhance the Tribe’s economic self-sufficiency and self-determination through the exercise of the Tribe’s inherent sovereign tax and regulatory authority.

Section 33-1-4. Definitions.

As used in this title the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine.

- (a) “Authority” the Flandreau Santee Sioux Tribe Tobacco Product Control Authority created pursuant to this title.
- (b) “Board” the Board of Directors of the Flandreau Tobacco Product Control Authority.
- (c) “Cigar” Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition of cigarette).
- (d) “Cigarette” (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.
- (e) “Government store” a store established by the Authority for the sale of tobacco products.
- (f) “Pipe tobacco” Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for the use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- (g) “Roll-your-own tobacco” Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers of cigars or cigarettes.
- (h) “Smokeless tobacco” any snuff or chewing tobacco.
- (i) “Special agent” an employee of the Flandreau Alcoholic Beverage Control Authority whom the Board has designated as a law enforcement officer pursuant to Tribal law.
- (j) “Tobacco products” Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.
- (k) “Tribal Court” the Flandreau Santee Sioux Tribal Court.

Section 33-1-5. Flandreau Tobacco Product Control Authority created; public purpose

A. The Executive Committee has determined that there exists in the Tribe a need to control the possession, sale, transportation, distribution, and delivery of tobacco products in the Tribe. Further, the Executive Committee determines that the creation of an authority for this purpose is

in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Tribe. To achieve this objective, there is hereby created wholly-owned, political subdivision of the Tribe to be known as the Flandreau Tobacco Product Control Authority. The Authority's exercise of powers and duties conferred by this title shall be deemed the performance of an essential governmental function, and a matter of public necessity for which public moneys may be spent. The exercise of the powers granted by this title shall be in all respects for the benefit of the citizens of the Tribe and for the promotion of their safety, health, welfare, and convenience. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.

B. The Flandreau Tobacco Product Control Authority shall at all times be wholly owned and operated by the Tribe. The Executive Committee retains ultimate control over the Flandreau Tobacco Product Control Authority. In its discretion, the Executive Committee hereby delegates management to the Tobacco Product Control Board of Directors, the Chief Executive Officer, and the agents and employees of the Authority. The Authority shall at all times be deemed to be an arm of the Tribe subject to all the privileges and immunities of the Tribe and operating for the purpose of benefiting the Tribal community pursuant to this Title.

C. Nothing contained in this title shall be construed as a restriction or limitation upon any powers that the Board of Directors of the Authority might otherwise have under any other law of the Tribe.

Section 33-1-6. Board of Directors; membership; terms; compensation

A. The Board of Directors shall be the Flandreau Santee Sioux Tribe Executive Committee (“Executive Committee”) until a time when the Executive Committee appoints a different board of directors, if ever. Directors will be removed when their position on the Executive Committee expires, they are removed from office, or for any other reason they are no longer members of the Executive Committee.

B. The Board shall meet at least monthly for the transaction of its business. Special meetings may be held at any time upon the call of the President of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.

C. Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth herein and pursuant to applicable Tribal law.

Section 33-1-7. Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer

A. The Chief Executive Officer of the Authority shall be appointed by the President and confirmed by the affirmative vote of a majority of those voting in the Executive Committee. The Chief Executive Officer shall receive such compensation as established by the Board, including any performance bonuses or incentives the Board deems advisable. The Chief Executive Officer shall be subject to a background check. The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law, and (ii) meet performance measures or targets set by the Board. The Chief Executive Officer may be removed from office by the President for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board, failure to carry out the policies of the Tribe as established in the Constitution or by the Executive Committee, or refusal to carry out a lawful directive of the President.

B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.

D. The Chief Executive Officer shall:

1. Serve keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;
2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;
3. Employ or retain such special agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and
4. Make recommendations to the Board for legislative and regulatory changes.

E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the Tribal level or cause such a contribution to be made on his behalf.

F. To assist the Chief Executive Officer in the performance of his duties, the Executive Committee may appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.

Section 33-1-8. Background investigations of Board members and Chief Executive Officer

All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a national criminal history records search. No person shall be appointed by the

Board who (i) has defrauded or attempted to defraud any federal, tribal, state or local government or governmental agency or authority by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact; (ii) has willfully deceived or attempted to deceive any federal, tribal, state or local government or governmental agency or governmental authority by making or maintaining business records required by statute or regulation that are false and fraudulent; (iii) is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. Ch. 52; or (iv) has been convicted of a felony violation of any provision of Federal, Tribal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or (v) has been convicted of a violation of any law applicable to the manufacture, transportation, possession, use, or sale of tobacco products within the five years immediately preceding appointment. The Executive Committee members may utilize the background checks conducted by the FSST Election Board for the purpose of compliance with this section.

Section 33-1-9. Employees of the Authority

Employees of the Authority shall be considered employees of the Tribe. Employees of the Authority shall be employed on such terms and conditions as established by the Board.

Section 33-1-10. Moneys of Authority

All moneys of the Authority, from whatever source derived, shall be paid in accordance with Section 33-1-22.

Section 33-1-11. Forms of accounts and records; audit; annual report

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be kept in accordance with United States Generally Accepted Accounting Principles. The Tribal Treasurer, or his legally authorized representatives, shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Executive Committee on or before June 30 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous September 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.

Section 33-1-12. Exemptions from taxes or assessments

The exercise of the powers granted by this title shall be in all respects for the benefit of the people of the Tribe, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes

of the Authority constitutes the performance of essential governmental functions. The Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this title or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which Tribal taxes would otherwise be required.

Section 33-1-13. Reversion to the Tribe

In the event of the dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Tribe.

Section 33-1-14. General powers of Board

The Board shall have the power to:

1. Adopt, use, and alter at will a common seal;
2. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;
3. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;
4. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and special agents as may be necessary and fix their compensation to be payable from funds made available to the Authority;
5. Receive and accept from any federal agency grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Tribe aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Flandreau Santee Sioux Tribe and as are consistent with Tribal law, and all Tribal moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Tribe;
6. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. The Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. The Board shall remain responsible for the performance of any such duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by written guidelines for the exercise of

the duties or tasks delegated. Where appropriate, the guidelines shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;7.

7. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;
8. Manufacture, buy, import and sell tobacco products, and to have tobacco products in its possession for sale;
9. Control the possession, sale, transportation and delivery of tobacco products;
10. Determine the localities within which government stores shall be established or operated and the location of such stores;
11. Maintain warehouses for tobacco products and control the storage and delivery of tobacco products to and from such warehouses;
12. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;
13. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed;
14. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including manufacturing plants. The Board may purchase, build, lease, and operate tobacco product manufacturing facilities;
15. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Tribe in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;
16. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer

oaths and take testimony thereunder, and decide cases, subject to final decision by the Board, on application of any party aggrieved. The Board may enter into consent agreements and may request and accept from any applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may include an admission or a finding of a violation. A consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial review, but may be considered by the Board in future disciplinary proceedings;

17. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Tribe if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

18. Promulgate regulations in accordance with applicable Tribal law and Section 33-1-19;

19. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

20. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate; and

21. Do all acts necessary or advisable to carry out the purposes of this title.

The foregoing shall be construed as objects, purposes, and powers, and enumeration thereof shall not be held to limit or restrict in any manner the powers hereafter conferred on this Authority by the Tribe.

Section 33-1-15. Criminal history records check required on certain employees; reimbursement of costs

All persons hired by the Authority whose job duties involve access to or handling of the Authority's funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment. All hiring shall be done in accordance with the Flandreau Santee Sioux Tribe Handbook, and associated policies.

Section 33-1-16. Counsel for members, agents and employees of Board

If any member, agent, or employee of the Board shall be arrested, indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Board President may employ special counsel approved by the Executive Committee to defend such member, agent, or employee. The compensation for special counsel employed pursuant to this section, shall, subject to the approval of the Executive Committee, be paid in the same manner as other expenses incident to the administration of this title are paid.

Section 33-1-17. Purchase orders of Board for tobacco products

- A. Every order of the Board for the purchase of tobacco products shall be authenticated by the President or by a member or agent of the Board, authorized by the Board to authenticate such orders. No order shall be binding unless so authenticated.
- B. A duplicate of every such order shall be kept on file in the office of the Board in accordance with retention regulations established under applicable Tribal and Federal law.
- C. All cancellations of orders made by the Board shall be authenticated in the same manner and a duplicate kept as required by subsection B.

Section 33-1-18. Regulations of Board

- A. The Board may promulgate reasonable regulations, not inconsistent with this title or the general laws of the Tribe, which it deems necessary to carry out the provisions of this title and to prevent the illegal manufacture, sale, distribution and transportation of tobacco products. The Board may amend or repeal such regulations. Such regulations shall be promulgated, amended or repealed as required or permitted by law and shall have the effect of law. The Board shall promulgate regulations that establish requirements for the form, content, and retention of all records and accounts consistent with applicable Federal and Tribal law, including the reporting and collection of taxes required by Title 23, section 3.9 of the Tribal Tax Act.
- B. Board regulations shall be uniform in their application.
- C. Courts shall take judicial notice of Board regulations.
- D. The Board's power to regulate shall be broadly construed.

Section 33-1-19. Advertising; limitations

No tobacco product advertising shall be allowed unless it complies with any and all applicable Tribal and Federal law and regulations related to same.

Section 33-1-20. Reports and accounting systems of Board; auditing books and records

- A. The Board shall make reports to the President as he may require covering the administration and enforcement of this title. Additionally, the Board shall submit an annual report to the President and Executive Committee on or before October 1 each year, which shall contain:
 - 1. A statement of the nature and amount of the business transacted by each government store during the year;

2. A statement of the assets and liabilities of the Board, including a statement of income and expenses and such other financial statements and matters as may be necessary to show the result of the operations of the Board for the year;
 3. A statement showing the taxes collected under Flandreau Santee Sioux Tribal Tax Act, Title 23, section 3.9 during the year;
 4. General information and remarks about the working of the tobacco product control laws within the Tribe; and
 5. Any other information requested by the President.
- B. The Board shall maintain an accounting system in compliance with generally accepted accounting principles.
- C. A regular postaudit shall be conducted of all accounts and transactions of the Board. An annual audit of a fiscal and compliance nature of the accounts and transactions of the Board shall be conducted on or before October 1. The cost of the annual audit and postaudit examinations shall be borne by the Board. The Board may order such other audits as it deems necessary.

Section 33-1-21. Disposition of moneys collected by Board; creation of Enterprise Fund; reserve fund

A. All moneys collected by the Board shall be paid directly and promptly into the Tribal treasury, or shall be deposited to the credit of the Tribal treasury in a depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description whatever.

All moneys so paid into the Tribal treasury, less the net profits determined pursuant to subsection C, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of (i) the salaries and remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in establishing and maintaining government stores, if any, and in the administration of the provisions of this title, including the purchasing, building, leasing and operation of manufacturing facilities and the manufacture of tobacco products.

B. The net profits derived under the provisions of this title shall be transferred by the Tribal Treasurer to the general fund of the Tribal treasury quarterly, within fifty days after the close of each quarter or as otherwise provided. As allowed by the President, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$500,000 in connection with the administration of this title and to provide for the depreciation on the buildings, plants and equipment owned, held or operated by the Board.

C. The term “net profits” as used in this section means the total of all moneys collected by the Board less all costs, expenses, and charges authorized by this section.

Section 33-1-22. Operation of government stores

A. The Board may establish, maintain, and operate government stores for the sale of tobacco products considered advisable by the Board. The Board may discontinue any such store.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands tobacco products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of tobacco products sold at government stores. Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of tobacco products sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.

D. Tobacco products at government stores shall be sold by employees of the Authority who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of tobacco products.

Section 33-1-23. Privileges and Immunities

The Tribe hereby confers on the Authority all of the rights, privileges, and immunities enjoyed by the Tribe, including, but not limited to, immunities from federal, state, and local taxes, regulations, and jurisdiction, to the same extent that the Tribe would have such rights, privileges, and immunities, if it engaged in the activities undertaken by the Authority. Any waiver of the sovereign immunity of the Authority must be explicitly adopted by the Executive Committee at a duly noticed meeting of the Executive Committee in accordance with the Tribal Constitution.

LEGISLATIVE HISTORY

This Authority was approved by the Executive Committee on the 9th day of May, 2019, by Tribal Resolution Number 19-45.