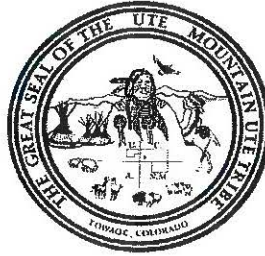


DATE: August 17, 2022

RESOLUTION NO. 2022-107



**RESOLUTION  
UTE MOUNTAIN TRIBAL COUNCIL**

**REFERENCE: APPROVING THE *HEMP PROGRAM PLAN* AND *CANNABIS CONTROL ACT*  
FOR THE UTE MOUNTAIN UTE TRIBE**

WHEREAS, the Constitution and By-Laws of the Ute Mountain Ute Tribe, approved June 6, 1940 and subsequently amended, provides in Article III that the governing body of the Ute Mountain Ute Tribe is the Ute Mountain Ute Tribal Council and sets forth in Article V the powers of the Tribal Council exercised in this Resolution;

WHEREAS, the Tribal Council is responsible for the advancement and protection of the Ute Mountain Ute Tribe's interests and the interests of its tribal members;

WHEREAS, the Tribe has drafted the attached Hemp Program Plan which is intended to meet the criteria set forth in the "2019 Farm Bill" for the cultivation, manufacture, and production of hemp;

WHEREAS, once approved, the Hemp Program Plan will render hemp cultivation, manufacture, and production legal on the reservation under federal law;

WHEREAS, on April 20, 2022, by Resolution Number 2022-067, the Tribal Council approved the *Hemp Program Plan* and *Cannabis Control Act*;

WHEREAS, since April 20, the Tribe submitted the Plan and Act to the United States Department of Agriculture for review and edits were made to both the Act and the Plan; and

WHEREAS, the action taken by this Resolution is in the best interests of the Tribe.

NOW, THEREFORE BE IT RESOLVED that the Tribal Council hereby formally approves the attached *Hemp Program Plan* for submission to the USDA and the attached *Cannabis Control Act*; and

BE IT FINALLY RESOLVED that the Tribal Council hereby authorizes the Chairman to sign this Resolution and to take such further action as may be necessary to carry out the intent of this Resolution.

The foregoing Resolution was duly adopted this 17<sup>th</sup> day of August, 2022.

A handwritten signature in blue ink that reads "Manuel Heart".

Manuel Heart, Chairman  
Ute Mountain Tribal Council

Resolution Number 2020-107

Re: Approving the *Hemp Program Plan* and *Cannabis Control Act* for the Ute Mountain Ute Tribe

**CERTIFICATION**

This is to certify that there was a quorum of 7 Tribal Council members present at the official meeting of the Ute Mountain Tribal Council held on August 17, 2022, that 6 voted for this Resolution, with 0 opposing, and that the above resolution was duly adopted.



---

Marilynn House, Recording Secretary  
Ute Mountain Tribe

---

# UTE MOUNTAIN UTE TRIBE HEMP PROGRAM PLAN

---

## TITLE I. LEGISLATIVE DECLARATION

### **1.01 Authority and Jurisdiction**

The Ute Mountain Ute Tribal Council establishes this Hemp Program Plan regulating all activities related to hemp cultivation, manufacture, possession, import, transport, and distribution pursuant to the authority granted to the Tribal Council in Article V, Sections 2(b), (d), (j), (n) and (p), and Section 2, of the Tribe's *Constitution*. This Plan was approved for submission to the United States Department of Agriculture on April 20, 2022, by Resolution Number 2022-067.

This Plan applies to all hemp operations on the Tribe's Lands, including fee lands whether within the exterior boundaries of the reservation or not, and no person will be allowed to cultivate, possess, distribute, transport, or import hemp of any kind on or onto Tribal Lands without first obtaining a license under this Plan and complying with all relevant regulations. (Note that transport of hemp through Tribal Lands is not regulated by the Plan so long as the product transported does not get unloaded onto Tribal Lands.) Additionally, no person may cultivate, possess, import, or distribute cannabis on Tribal Fee lands that are beyond the exterior boundaries of the reservation and not held in trust without first obtaining proper authority from the state within which the operations will occur, or there being no such state authority, the USDA. The Tribe does not take the responsibility to ensure that all Licensees are in compliance with any applicable state or federal license or permit and does not assume any liability for the failure of a Licensee to maintain compliance with a state or federal license or permit.

### **1.02 Sovereign Immunity**

By adopting this Plan, the Ute Mountain Ute Tribe does not waive its sovereign immunity to any extent and, except as to appeals against decisions of the Cannabis Regulatory Commission described in the Tribe's *Cannabis Control Act*, does not hereby consent to have any claim against it or any of its officers, employees, departments, enterprises, agents, or any other entity entitled to assert the sovereign status of the Tribe adjudicated in any court, tribunal, or other adjudicative body.

### **1.03 Policy**

It is the declared policy of Ute Mountain Ute Tribe that hemp is a valuable agricultural crop and commodity in the United States that can provide economic development opportunities for the Tribe and its Members and can improve the health of consumers.

### **1.04 Purpose**

The purpose of this Plan is to:

- a) Promote the production of hemp, and the development of new commercial markets for farmers and businesses through the sale of raw hemp and hemp products;
- b) Promote the creation and expansion of the Tribe's hemp industry to the maximum extent permitted by law;
- c) Encourage and empower research into hemp production and the creation of hemp products at institutions of higher education and in the private sector; and
- d) Regulate hemp as an agricultural commodity in compliance with federal law.

### **1.05 Submission for Approval**

Tribes desiring to have primary regulatory authority over the production of hemp on the Tribal Lands for which it has jurisdiction must submit to the Secretary of the United States Department of Agriculture for approval, through the Tribal government, a plan under which the Tribe monitors and regulates that production.

### **1.06 Commitment of Adequate Resources**

By submitting this Plan, the Tribe represents and warrants that it has the capacity to and will dedicate adequate resources to the performance of its obligation under this Plan and the *Cannabis Control Act*.

### **1.07 Licenses Issued**

The Tribe's *Cannabis Control Act* allows the issuance of various licenses related to hemp and does not authorize any licenses related to marijuana. Each Licensee will be required to obtain a Hemp Industry License in order to participate in any hemp program and a single Licensee may hold numerous hemp licenses depending on the specific hemp activity they are participating in. The Licenses that may be issued under the Act are:

- a) Hemp Industry License for all persons and entities engaged in the import, cultivation, distribution, product manufacturing, or transport of hemp and hemp materials on Tribal Lands;

- b) Hemp Import License for all persons and entities importing hemp materials onto Tribal Lands;
- c) Hemp Cultivation License for all persons and entities growing hemp on Tribal Lands;
- d) Hemp Distribution License for all persons and entities distributing hemp material within or from Tribal Lands;
- e) Hemp Product Manufacturing License for all persons and entities manufacturing hemp products on Tribal Lands; and
- f) Hemp Transport License for all persons or entities who transport hemp material within or away from Tribal Lands. Licenses are not required for the transport of hemp material through Tribal Lands when the hemp material is not being delivered to a person or entity on Tribal Lands or deposited onto Tribal Lands.

No license is required for hemp activities which occur on Tribal Lands that are not held in trust for the benefit of the Tribe or a Member of the Tribe and are located beyond the exterior boundaries of the reservation, but only so long as the persons participating in the hemp activity have obtained proper licensure from the state in which the activities are located and has obtained a Tribal Permit for Off-Reservation Hemp Activities.

#### **1.08 Tribal Permit for Off-Reservation Hemp Activities**

The Regulatory Commission may issue a Tribal Permit for Off-Reservation Hemp Activities for any person who intends to participate in any activity related to hemp on Tribal lands within state jurisdiction (fee lands and restricted fee lands beyond the boundary of the reservation) and subject to state licensure where the activity occurs, but only so long as the persons or entities seeking to conduct such activities have:

- a) Obtained permission from the Tribal Council to occupy the Tribal lands;
- b) Are in and remain in compliance with the state licensure;
- c) Is conducting an activity that is permissible under this Plan and the Tribe's *Cannabis Control Act*; and
- d) Is not conducting any activity involving marijuana.

#### **1.09 Cannabis Regulatory Commission**

Regulatory activities set forth in this Plan will be administered by the Tribe's Cannabis Regulatory Commission under the authority of the Tribe's *Cannabis Control Act*.

## TITLE II. DEFINITIONS

### 2.01 Definitions

Unless indicated otherwise, terms used in this Plan have the following meanings.

“Acceptable Hemp THC Level” means the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis that produces a distribution or range that includes 0.3% or less.

“AMS” means Agricultural Marketing Service.

“Applicant” means a person, or a person who is authorized to sign for a business or Tribal entity who submits an application to participate in the Tribal Hemp Program.

“Cannabis” means a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

“*Cannabis Control Act*” means the Tribal law that implements this Code for the Ute Mountain Ute Tribe.

“Cannabis Regulatory Commission” means the Tribal agency established by the *Cannabis Control Act* to regulate cannabis cultivation, import, distribution, transport, and manufacture on Tribal Lands.

“CFR” means the Code of Federal Regulations.

“Commercial Sales” means the sale of a product in the stream of commerce at retail or at wholesale, including sales on the internet.

“Commissioner” means a member of the Tribe’s Cannabis Regulatory Commission.

“Consumable Product” means a hemp product intended for human or animal consumption.

“Conviction” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this part, a conviction is expunged when the conviction is removed from the individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this Plan.

“Corrective action plan” means a plan established by the Cannabis Regulatory Commission for a licensed hemp producer to correct a negligent violation or non-compliance with this Plan.

“Court” means the adjudicative body established by the Tribe to rule on general civil and criminal matters, or the Court of Indian Offenses, Ute Mountain Ute Agency.

“Criminal Background” means the history of criminal offenses.

“Culpable mental state greater than negligence” means to act intentionally, knowingly, willfully, or recklessly.

“Cultivate” means to plant, water, grow, or harvest a plant or crop.

“DEA” means the Drug Enforcement Administration.

“Decarboxylated” means the completion of the chemical reaction that converts THC–acid (THC–A) into delta–9–THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta–9–THC and eighty-seven and seven tenths (87.7) percent of THC–acid.

“Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.

“Delta–9 tetrahydrocannabinol or THC” means Delta–9–THC is the primary psychoactive component of cannabis. For the purposes of this Plan, delta–9–THC and THC are interchangeable.

“Department” means the Ute Mountain Ute Tribe’s Department of Agriculture.

“Dry weight basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

“Entity” means a corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

“Federally Defined THC Level for Hemp” means the level of THC concentration for hemp defined in federal law.

“Fee Lands” means the lands owned by the Ute Mountain Ute Tribe that are not part of or within the exterior boundaries of the Ute Mountain Ute Reservation.

“FSA” means the Farm Service Agency of the USDA.

“Gas Chromatography” means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. Gas chromatography relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

“Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

“GPS” means global positioning system and can establish a geospatial location.

“Grow Site” has the same meaning as “Registered Land Area” as that term is defined in this Section, below.

“Hemp” means the plant species *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 total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

“Hemp Cultivation License” means a license issued under this plan or the cultivation of Hemp Program Plants and related hemp materials derived from the plants cultivated.

“Hemp Crop” means one (1) or more unprocessed Hemp Program Plants or plant parts.

“Hemp Ingredient” means all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers of any part of the Hemp Program Plant included in the definition of “hemp.”

“Hemp License” means any one of the various hemp licenses issued by the Tribe under its *Cannabis Control Act*.

“Hemp Material” means any item containing hemp that is the result or subject of cultivation, manufacture, importation, transport, or distribution.

“Hemp Product” means a finished product with the federally defined THC level for hemp 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.

“Information sharing system” means the database mandated under the Act which allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

“Key Participant” means a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes



persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

“Law enforcement agency” means any Federal, State, or local law enforcement agency.

“License” means the authority to conduct specific activities as defined by the authorizing authority.

“License Number” means the identifier provided by the Tribe for each license issued under this Plan.

“Licensee” means any person who has obtained a license from the Tribe under its *Cannabis Control Act*.

“Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. Also, “lot” means the batch of contiguous, homogenous whole of a product being sold to a single buyer at a single time.

“Marijuana” as defined in the federal *Controlled Substances Act*, “marihuana” means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term ‘marihuana’ does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). “Marihuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

“Measurement of Uncertainty (MU)” means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

“Negligence” means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

“Non-Compliant Hemp” means cannabis plants that exceed the acceptable hemp THC level.

“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, as well as a tribal, state or local government entity.

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

“Registered Land Area” means a contiguous lot, parcel, or tract of land registered with the Ute Mountain Ute Tribe on which a licensee cultivates hemp. A Registered Land Area may include land and buildings that are not used to cultivate hemp.

“Remediation” means any process by which non-compliant hemp is rendered compliant.

“Reservation” means the lands held in trust by the United States for the benefit of the Ute Mountain Ute Tribe.

“Reverse distributor” means a person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

“Secretary” means the Secretary of the United States Department of Agriculture.

“Tribal Lands” means the trust, allotment, and fee lands owned by the Tribe, including restricted fee lands and lands owned by the Tribe beyond the exterior boundaries of the reservation not held in trust for the benefit of the Tribe or its members.

“THC” means tetrahydrocannabinol and has the same meaning as delta-9 THC, measured post-decarboxylation.

“USDA” means the United States Department of Agriculture.

“Ute Mountain Ute Reservation” means the lands held in trust by the United States for the benefit of the Ute Mountain Ute Tribal Members.

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

### **TITLE III. COMPLIANCE WITH APPLICABLE LAW**

#### **3.01 Compliance with Other Laws**

Nothing in this Plan authorizes any person to violate any Tribal, federal, or state law or regulation and all provisions of this Plan are to be read and understood as compliant with Tribal, federal, and state laws and regulations. Where a provision of this Plan is inconsistent with Tribal or federal law, the Tribal or federal law will supersede the conflicting provision with the federal laws controlling.

#### **3.02 Plan Approval and Revocation**

Before this Plan may be implemented, the Plan must be submitted to and approved by the Secretary of United States Department of Agriculture and must remain in good standing with the Secretary.

If the United States Department of Agriculture revokes approval of this Plan due to noncompliance, producers licensed or authorized to produce hemp under the revoked Plan may continue to produce for the remainder of the calendar year in which the revocation became effective. Producers may then apply to be licensed under the United States Department of Agriculture plan for 90 days after the notification even if the time period does not coincide with the annual application window.

### **3.03 Tribal Capacity**

By submitting this plan, the Ute Mountain Ute Tribal Council certifies that the Tribe is capable of enforcing the regulations set forth in this Plan and has the resources and personnel to carry out the practices and procedures described in this Plan.

### **3.04 Audit Compliance**

The Tribe and its personnel involved with the Tribal Hemp Program Plan will cooperate with any audit of the Tribal Hemp Program performed by the United States Secretary of Agriculture.

### **3.05 Sovereign Immunity**

With this Plan, the Tribe does not waive the sovereign immunity of the Tribe or any of its subordinate entities.

### **3.06 Transportation through the Reservation**

Nothing in this Plan is intended to prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the *Agricultural Marketing Act of 1946* on the rights-of-way through the Reservation.

### **3.07 License Numbering**

The USDA has established a License Numbering Scheme for Tribal hemp projects that includes the Department of Interior's Identification Code for Tribal Governments followed by the Tribe's License Number. For the Ute Mountain Ute Tribe, the Tribal Government Identification Code is M45754, so License Numbers under the Tribe's hems licenses will be numbered as follows [M45754\_####].

## TITLE IV. REPORTING

### 4.01 Producer Report

For each person or entity applying for and receiving a hemp license from the Tribe, the Tribe will collect, maintain, and report to the Secretary the following information by the first of each month (if the first of the month falls on a weekend or holiday, the information will be reported in the first business day after the weekend or holiday) using a digital format compatible with USDA's information sharing system:

- a) For each new license issued to an individual:
  - i) Full name of Licensee;
  - ii) License Number and type of license;
  - iii) Business address;
  - iv) Telephone number; and
  - v) Email address (if any);
- b) For each new license issued to an entity:
  - i) Full name of the entity;
  - ii) Principal business address;
  - iii) License Number and type of license;
  - iv) For each employee and key participants, for whom a criminal background check is required:
    - A) Full name;
    - B) Title; and
    - C) Email address (if any); and
  - v) Employer Identification Number.
- c) For each current license issued to a person or entity:
  - i) Contact information;
  - ii) License Number;

- iii) The status of the license; and
  - iv) Any other authorization issued for each Licensee covered under the Plan.
- d) For each Licensee included in a previous report whose reported information has changed:
- i) The new information; and
  - ii) The previously reported information;
- e) The status of each license;
- f) The period covered by the report;
- g) If there are no changes from the previous report, an indication that there are no changes; and
- h) A legal description of the land on which the Hemp Cultivation Licensee's will cultivate hemp including, to the extent practicable, its geospatial location.

#### **4.02 Reporting By Licensees**

All Hemp Cultivation Licensees must report hemp crop acreage to the Cannabis Regulatory Commission, FSA, USDA, and AMS and must provide, at minimum, the following information:

- a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If a Hemp Cultivation Licensee operates in more than one location, that information must be provided for all production sites;
- b) Acreage dedicated to the production of hemp, or greenhouse, or indoor square footage dedicated to the production of hemp; and
- c) License Number.

#### **4.03 Disposal Report**

For each Licensee producing cannabis that exceeds the Acceptable Hemp THC Level, the cannabis will be disposed of in accordance with the *Controlled Substances Act* and DEA regulations found at 21 CFR 1317.15. By the first of each month, the Tribe will submit to USDA a report notifying USDA of any occurrence of non-conforming plants or plant material and provide a disposal record of those plants and materials. The report will include information regarding name and contact information for each producer subject to a disposal during the reporting period, and the date the disposal was completed. If the first of the month falls on a

weekend or holiday, reports are due by the first business day following the due date. The report will contain the following information:

- a) Name and address of Licensee;
- b) License Number;
- c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal;
- d) Identifying information about the Cannabis Regulatory Commission agent monitoring the disposal, unless photos, videos, or other proof of disposal can be provided with the approval of the Cannabis Regulatory Commission;
- e) Disposal completion date; and
- f) Total acreage.

#### **4.04 Annual report**

By December 15 of each year, the Tribe will submit an annual report to USDA containing the following information:

- a) Total planted acreage;
- b) Total harvested acreage; and
- c) Total acreage disposed.

#### **4.05 Test Results Report**

Each Licensee with a Hemp Cultivation License must ensure the hemp is tested for total THC content by a laboratory approved by the Drug Enforcement Administration. Except for tests that are done during the growing season for the purpose of monitoring THC levels, the test results for each sample must be reported to the USDA within 10 days of the completion of the tests. The test result report must contain the following information:

- i) The Hemp Cultivation Licensee's License Number;
- ii) The name of the Hemp Cultivation Licensee;
- iii) The business address of the Hemp Cultivation Licensee;
- iv) Lot identification number for the sample;
- v) The name of the laboratory and the DEA registration number for laboratory testing;

- vi) The date of the test and the report;
- vii) Identification of a pre-harvest or post-harvest test;
- viii) The results of the test; and
- ix) The measurement of uncertainty for the lot tested.

#### **4.06 Permittee Report**

Each person or entity who has received a Tribal Permit for Off-Reservation Hemp Activities must report to the Regulatory Commission at least monthly the following information:

- a) The status of the state license and whether any sanctions have been imposed by the state with regard to the activities under the license issued by the state; and
- b) Whether any hemp was produced above the total Acceptable Hemp THC Level and, if so, evidence of the proper disposal of the non-compliant hemp.

### **TITLE V: TESTING, SAMPLING, AND DISPOSAL**

#### **5.01 Laboratories**

- a) The Tribe will ensure that each Licensee will utilize only DEA-registered laboratories to conduct the testing of the samples from its lots or other materials and reports the test results for all samples tested to the USDA.
- b) When a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty to the Licensee and the Tribe's Cannabis Regulatory Commission and conform to all other federal regulatory requirements as necessary, such as but not limited to:
  - i) Laboratory quality assurance must ensure the reliability and validity of test results;
  - ii) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate for the purpose, and that the laboratory can successfully perform the testing;
  - iii) The demonstration of testing validity must ensure consistent, accurate analytical performance;
  - iv) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan;

v) Effective disposal procedures for non-compliant samples that do not meet the requirements of this Plan;

vi) Measurement of uncertainty must be estimated and reported with the test results. Laboratories must use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty;

vii) Sample preparation pre- and post-harvest must require grinding if samples to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by the USDA; and

viii) Only laboratories registered with the DEA may conduct testing under this Plan.

## **5.02 Sampling**

Each Hemp Cultivation Licensee must have each lot sampled by a certified sampling agent at least once prior to harvesting pursuant to the following procedures and the Sampling Guidelines for Hemp issued January 15, 2021 (If these guidelines conflict with the Tribe's Sampling Guidelines, the USDA's Sampling Guidelines will supersede these guidelines):

a) Within 30 days prior to harvest, samples of the plants must be collected by a USDA-approved sampling agent who must be a person other than the Licensee or an employee working at the growing facility being sampled. Names of approved sampling agents can be obtained from the Cannabis Regulatory Commission;

b) Samples must be obtained only from the flowering tops of the plants when flowering tops are present and must be approximately 5 to 8 inches on length from the "main stem" (that includes the leaves and flowers), the "terminal bud" (that occurs at the end of the stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant;

c) The method used for sampling must be sufficient at a confidence level of 95% that no more than 1% of the plants in each lot would exceed the Acceptable Hemp THC Level and ensure that a representative sample is collected that represents a homogenous composition of the lot.

d) The Hemp Cultivation Licensee or their representative must be present during the sampling;

e) The agent collecting the sample must be trained using Tribal, Colorado State, or USDA training procedures;

f) Agents trained to collect samples must be provided complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or



harvested), to areas where hemp is grown and stored, and to 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 Licensee's license;

g) A Hemp Cultivation Licensee may not harvest the cannabis crop prior to samples being taken;

h) Samples of hemp material from one lot may not be comingled with samples from another lot;

i) Sample preparation of ~~pre-~~ post-harvest samples must require grinding in a lab of the sample in order to ensure homogeneity of plant material prior to testing; and

j) For lots of less than one acre, including greenhouses, sampling agent must select a minimum of one plant to sample. For lots of 1 to 10 acres, including greenhouses, follow the chart included in the Sampling Guidelines for Hemp issued January 15, 2021. For growing areas larger than 10 acres, including greenhouses, the number of plants should be selected to form a composite sample based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.

### 5.03 Testing

Each Hemp Cultivation Licensee must have each lot tested at least once prior to harvesting for total delta-9 tetrahydrocannabinol concentration pursuant to the following procedures:

a) The testing procedure must include a validated testing methodology that uses post-decarboxylation or other similarly reliable methods;

b) The testing methodology must consider the potential conversion of THCA in hemp to THC and the result must report the total available THC derived from the sum of the THC and THCA content;

c) Testing methodologies include, but are not limited to, gas or liquid chromatography with detection;

d) The total THC concentration must be determined and reported on a dry weight basis;

e) Any test of a representative sample resulting in a higher than Acceptable Hemp THC Level is conclusive evidence that the lot represented by the sample is not in compliance with this Plan and must be disposed of or remediated in accordance with this Plan;

f) Samples of hemp plant material from one lot may not be comingled with hemp plant material from other lots; and

g) The measurement of uncertainty must be estimated and reported with the test results.

#### 5.04 **Remediation and Disposal**

Plants which test above the Acceptable Hemp THC Level must be disposed of or remediated in order to bring the lot under Acceptable Hemp THC Levels.

##### a) Generally

- i) Licensees must verify disposal or remediation by submitting required documentation to the USDA with a copy to the Commission;
- ii) Licensees must make all records related to disposal or remediation available for inspection by the Cannabis Regulatory Commission, the USDA, auditors, or their representatives during reasonable business hours;
- iii) Verification of remediation or disposal may be in the form of in-person observation by the Cannabis Regulatory Commission's authorized representative, or by providing pictures, videos, or other proof that disposal or remediation occurred successfully;
- iv) If remediation is not successful, the remaining plants and plant materials must be destroyed and rendered incapable of entering the market; and
- v) Upon notification that a lot has tested above the Acceptable Hemp THC Level, the Licensee must notify the Commission of the Licensee's decision to either destroy or remediate the non-compliant lot in accordance with the Tribal Hemp Program Plan and the process which will be implemented to execute the disposal or remediation.

##### b) Disposal

There are two methods for disposal of non-compliant plant materials: disposal by a reverse distributor and disposal by on-farm activities. Either means of disposal is acceptable under this Act, and the Licensee must inform the Cannabis Regulatory Commission of the method to be utilized before disposal may occur.

- i) Disposal of non-compliant plants and plant material must be conducted by a DEA-registered reverse distributor or law enforcement officer, or can be done on site at the location of the cultivation; and
- ii) Disposal may be achieved by performing any one or combination of the following on-farm activities; plowing under, mulching, composting, disking, bush mowing, deep burial, and burning.

c) Disposal by Reverse Distribution

Any person that reverse distributes hemp material must be registered with the DEA as a reverse distributor, unless exempted by law or otherwise authorized pursuant to 21 CFR Part 1317. A reverse distributor must acquire the hemp material from a Licensee pursuant to 21 CFR §§ 1317.05 and 1317.55(a) and (c) in the following manner:

i) Pick-up the hemp material from a Licensee at the Licensee's registered location or authorized collection site; or

ii) Receive the hemp material delivered by common or contract carrier or delivered directly by a non-practitioner.

A) Delivery to the reverse distributor by a Licensee directly or by common or contract carrier may only be made to the reverse distributor at the reverse distributor's registered location. Once *en route*, such deliveries may not be re-routed to any other location or person, regardless of registration status.

B) All deliveries to a reverse distributor may only be personally received by an employee of the reverse distributor at the registered location.

iii) Upon acquisition of the hemp material by delivery or pick-up, a reverse distributor must:

A) Immediately store the hemp material in accordance with the security controls in parts 1301 and 1317 of 21 CFR at the reverse distributor's registered location or immediately transfer the hemp material to the reverse distributor's registered location for secure storage in accordance with the security controls in parts 1301 and 1317 of 21 CFR until timely destruction or prompt return of the hemp material to the Licensee or other person authorized by the Licensee to accept returns or recalls on the Licensee's behalf;

B) Promptly deliver the hemp material to the Licensee or another person authorized by the Licensee to accept returns or recalls on the Licensee's behalf; or

C) Timely destroy the hemp material in a manner authorized by federal law;

iv) A reverse distributor must destroy or cause the destruction of any hemp material received for the purpose of destruction no later than 30 calendar days after receipt;

d) Remediation

Remediation must be done by the Licensee, the Commission, or by the USDA, and, regardless of the party who remediates the non-compliant plants and plant materials, compliance with this provision is the responsibility of the Licensee.

i) Non-complaint Hemp Program Plants may be remediated by:

A) Separating and destroying non-compliant flowers, while retaining stalks, leaves, and seeds;

1) The flowers, including the buds, trichomes, “trim”, and “kief”, must be removed from the lot and destroyed as described in the Tribe’s Hemp Program Plan;

2) The stalks, leaves, and seeds must be separated from the non-compliant floral material and clearly labeled and demarcated as “hemp for remediation purposes” or some similar notation; and

3) Seeds removed for remediation purposes may not be used for propagative purposes; or

B) Shredding the entire plant to create “biomass”.

1) All flowers, buds, trichomes, leaves, stalks, and all plant parts from a lot must be chopped or shredded in such a way as to create a homogenous, uniform blend of the lot;

2) Lots must be kept separate and not be combined during this process;

3) The biomass must be sampled and tested to ensure the biomass material test within Acceptable HEMP THC Levels before it may enter the stream of commerce; and

4) If the biomass tests above the Acceptable Hemp THC Level, then it must be disposed of;

5) The remediated biomass must be separated from any compliant hemp stored in the area and clearly labelled and demarcated as “hemp for remediation purposes” or similar notation and all lots subject to remediation should be stored, labelled, and demarcated apart from each other and from other compliant hemp lots stored or held nearby; and

6) Remediated lots should not leave the stored area until there is a test result showing compliance with the Acceptable Hemp THC Level is received or until the biomass will be destroyed.

ii) Resampling and re-testing remediated plants and plant-materials.

A) Remediated biomass must be resampled and retested before entering the stream of commerce;

B) Biomass that fails the re-testing must be destroyed;

C) Biomass samples must be taken from various depths, locations, and containers in the labelled and demarcated area in order to collect a representative sample of the material using the procedure set forth in this Section;

D) The biomass samples must be at least 750 ml or three standard measuring cups of biomass material. If 750 ml is not available, then a representative sample must be taken; and

E) The results of the re-testing must be maintained for 3 years from the date of re-testing.

F. Remediated materials from section A must receive a compliant THC test before they may enter commerce.

#### **5.05 Fees and Costs**

Licensees are responsible for paying all costs for sampling, testing, remediation, and disposal as applicable.

### **TITLE VI. ENFORCEMENT AND VIOLATIONS**

#### **6.01 Producer Violations**

Licensees and Permittees who violate the terms of this Plan are subject to enforcement in accordance with the terms of this section.

#### **6.02 Negligent Violations**

Negligent violations include, but are not be limited to:

a) Failure to provide a legal description of land on which the producer produces hemp;

b) Failure to obtain a license, permit, or other required authorization from the Tribe; or

c) Production of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the Acceptable Hemp THC Level. Hemp producers do not commit a negligent violation under this paragraph, if they make reasonable efforts to grow hemp and the cannabis does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

### **6.03 Corrective Action for Negligent Violations**

Negligent violators will be subject to a corrective action plan which must include, at minimum, the following terms:

- a) A reasonable date by which the Licensee or Permittee will correct the negligent violation;
- b) A requirement that the Licensee or Permittee will periodically report to the Tribe on its compliance with this Plan for a period of not less than the next 2 years from the date of the negligent violation;
- c) A Licensee or Permittee that negligently violates this Plan may not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal, or local government;
- d) A Licensee or Permittee that negligently violates this Plan three times in a 5-year period is ineligible to obtain a hemp license or permit from the Tribe for a period of 5 years beginning on the date of the third violation; and
- e) The Tribe will conduct inspections to determine whether the corrective action plan has been implemented as submitted.

### **6.04 Culpable Violations**

If the Tribe determines that a Licensee or Permittee has violated this Plan with a culpable mental state greater than negligence, the Tribe will immediately report the producer to:

- a) The U.S. Attorney General; and
- b) The chief law enforcement officer of the Tribe.
- c) Paragraphs 6.02 and 6.03 of this Title do not apply to culpable violations.

### **6.05 Felonies**

a) A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in this Plan and producing hemp under this Plan from the date of the conviction. An exception applies to a person

who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

b) Any Licensee or Permittee growing hemp lawfully with a Tribal license, permit, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before October 31, 2019 is exempted from paragraph a) of this section 6.05.

c) For Licensees and Permittees that are entities, each employee engaged in the cultivation, manufacture, distribution, transport, or importation of hemp is subject to these provisions.

#### **6.06 False Statement**

Any person who materially falsifies any information contained in an application to participate in activities regulated by this Plan is ineligible to obtain a Tribal license or permit.

### **TITLE VII. INSPECTIONS**

#### **7.01 Inspections**

The Tribe will ensure that random samples of hemp materials will be sampled and tested at least once per year for each Licensee's hemp operations.

### **TITLE VIII. USDA PLANS**

#### **8.01 USDA Plans**

If this Plan is not approved by the USDA and the Tribe has not prohibited the production of hemp within Tribal Lands, a producer may produce hemp on the Tribal Lands in accordance with USDA regulations.

**END**

---

# CANNABIS CONTROL ACT of the UTE MOUNTAIN UTE TRIBE

---

## TITLE I – GENERAL PRINCIPLES

### 1.01 Purpose

In order to promote the economic welfare of the Ute Mountain Ute Tribe and its Members, the Ute Mountain Ute Tribal Council hereby authorizes the possession, cultivation, distribution, and manufacture of cannabis. Nothing in this Act is intended to authorize activities which are prohibited by federal law.

### 1.02 Authority and Jurisdiction

Exercising the authority granted to it under Article V, Section 1(b)(d)(j)(n) and (p) of the *Constitution and By-Laws* of the Ute Mountain Ute Tribe, as adopted on May 8, 1940 and as subsequently amended, the Ute Mountain Ute Tribal Council approves this Act by Resolution Number 2022-067, passed on April 20, 2022. The matters addressed within this Act are entirely within the jurisdiction of the Tribal Council.

No license may be issued pursuant to this Act until the Tribal Hemp Program Plan Act is approved by the USDA and remains in effect. If the Hemp Program Plan is suspended or terminated, then this Act will simultaneously be suspended or terminated. If this Hemp Program Plan is suspended or terminated by the USDA, Hemp Cultivation Licensee's who received a license before the Hemp Program Plan was suspended or terminated may continue to operate, but only so long as they obtain a license from the USDA under USDA's guidelines so long as hemp production remains legal on Tribal Lands.

These regulations apply to all hemp operations on the Tribe's fee lands, allotments, and trust lands and no person will be allowed to cultivate, possess, distribute, transport, or import hemp of any kind on Tribal Fee Lands without first obtaining a license under this Act and complying with all relevant regulations. Additionally, no person may cultivate, possess, import, transport, or distribute hemp on Tribal Fee lands without first obtaining proper authority from the state within which the cannabis operations will occur. The Tribe does not take the responsibility to ensure that all Licensees are in compliance with any applicable state license or permit and does not assume any liability for the failure of a Licensee to maintain compliance with a state license or permit.



## Cannabis Control Act

### 1.03 Sovereign Immunity

By adopting this Act and exercising the right and obligations set forth in this Act, neither the Tribe nor any of its employees, officers, agents, departments, programs, commissions, or any other entity entitled to enjoy the sovereign status of the Tribe consents to have any matter related to this Act adjudicated in any court, tribunal, or other adjudicative body. Consent is hereby provided, however, for actions against the Cannabis Regulatory Commission, but only as set forth in this Act and such claims are enforceable against the Cannabis Regulatory Commission only and are not enforceable against the Tribal government.

### 1.04 Hemp Legalization

Possession, cultivation, distribution, import, transport, and manufacture of hemp and hemp products by a person 21 years of age or older is hereby legal on the Ute Mountain Ute Reservation and within the jurisdiction of the Tribe, but only so long as the possession, cultivation, distribution, import, transport, and manufacture is compliant with this Act and is not prohibited by the laws of the United States or the state within which the possession, cultivation, distribution, import, transport, or manufacture is taking place.

#### 1.04.01 United States Regulations

If any activity related to hemp under this Act is deemed by the United States or a court of competent jurisdiction to be prohibited under federal law, then the same activity is prohibited under this Act in the same manner and any language in this Act which authorizes such activities is hereby nullified.

##### a) Marijuana

Possession, cultivation, distribution, import, transport, and manufacture of marijuana and marijuana products on Tribal Lands is not authorized by this Act and remains illegal.

##### b) Hemp

Hemp Possession, cultivation, distribution, import, transport, and manufacture on Tribal Lands is authorized by this Act only to the extent such activities are authorized by the Agricultural Improvement Act of 2018 (P.L. 115-334, also known as the Farm Bill). This Act authorizes the possession, cultivation, distribution, import, transport, and manufacture of hemp and hemp products only to the extent such activities are not prohibited by the United States.

### 1.05 Interpretation

This Act is to be read consistently with federal laws and the Tribe's Hemp Program Plan that address the same activities as this Act and is not intended to supersede, alter, or diminish the applicability of any federal law to activities authorized by this Act. To the extent that any federal

## Cannabis Control Act

law or the Hemp Program Plan is inconsistent with this Act, the federal law and the Hemp Program Plan will apply, in that order, and the authority granted by this Act is nullified or deemed amended so as to comply with the law or the Plan when practicable.

These rules are to be liberally construed in order to meet the purpose of this Act.

### 1.06 Applicable Lands

This Act applies to activities conducted on Tribal trust lands, allotments, Tribally-owned restricted fee and fee lands whether within the boundaries of the reservation or not. No provision of this Act allows the possession, cultivation, distribution, import, transport, or manufacture of cannabis or cannabis products on any non-trust federal lands or properties so long as such possession, cultivation, distribution, import, transport, or manufacture is prohibited by the United States.

### 1.07 “Possession, Cultivation, Distribution, Import, Transport, or Manufacture”

The use of the phrase “possession, cultivation, distribution, import, transport, or manufacture” in this Act is intended to be comprehensive and to include all activities related to cannabis which are conceptually capable of regulation in any way. This Act is intended to regulate all activities related to cannabis in all its forms. If any activity related to cannabis is not specifically regulated by this Act, but can be reasonably included in these regulations, then this Act is deemed amended in order to include the activity. If such activity is not capable of being included in these regulations, then the activity is not deemed to be regulated by this Act.

### 1.08 Subsequent Amendments

Any substantive amendments to this Act which alter the way this Act complies with applicable federal laws or the Tribal Hemp Program Plan must be submitted to the USDA for approval within 60 days of the effective date of the amendments. The amendments under review may not be implemented or enforced until the USDA approves the amendments, and any amendments which are rejected by the USDA will not take effect.

### 1.09 Definitions

Unless indicated otherwise in this Act, the following terms have the following meanings:

“Acceptable Hemp THC Level” means 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 percent or less.

“Act” means this *Cannabis Control Act*.

“AMS” means Agricultural Marketing Service.

## Cannabis Control Act

“Cannabis” means any of the aerial parts of a plant in the genus *Cannabis*, and includes both marijuana and hemp.

“Cannabis Regulatory Commission” means the Tribal agency established by this Act for the regulation of cannabis.

“Cannabis Products” means items that contain cannabis in any form.

“CBD” means cannabidiol.

“Controlled Substance” means a substance regulated by the federal Controlled Substances Act.

“Conviction” means any plea of guilty or *nolo contendere*, or any finding of guilt, except when the finding of guilt is overturned on appeal, pardoned, or expunged, or when the plea is withdrawn and the case is subsequently dismissed.

“Culpable Mental State Greater than Negligence” means to act intentionally, knowingly, willfully, or recklessly.

“Cultivation” means to grow, harvest, dry, and cure a plant.

“DEA” means the United States Drug Enforcement Administration.

“Decarboxylation” means the removal or elimination of carboxyl group from a molecule or organic compound.

“Disposal” means destroying non-compliant hemp or hemp material for research purposes using one of the approved on-farm methods. Approved methods include plowing under, mulching or composting, disking, bush mowing, deep burial, and burning.

“Distribution” means the intentional transfer on an item from one person to another with the intent of changing its ownership whether the transfer is with or without compensation.

“Drug” means a substance used in the diagnosis, treatment, or prevention of a disease or as a component of a medication.

“Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample.

“Farm Bill” means the Agricultural Improvement Act of 2018 (P.L. 115–334).

“Fee Lands” means lands held by the Tribe that are not in trust, regardless of where the lands are located and regardless of whether the lands are in restricted status.

## **Cannabis Control Act**

“Geospatial Location” means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

"Hemp" means the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis. Hemp does not include marijuana.

“Hemp Material” or “Hemp Program Plant Material” means the product resulting from the remediation or disposal of Hemp Program Plants and any other substance derived from the Hemp Program Plant before or during manufacturing into a hemp product.

“Hemp Product” means any substance derived from the Hemp Program Plant that is in its final or near-final form.

“Import” or “Importation” means bringing a product onto Tribal Lands with the purpose of utilizing, distributing, or consuming the product on Tribal Lands, and does not include, for instance, transporting the product through Tribal Lands on a state right-of-way when the product will not be utilized, distributed, or consumed on Tribal Lands.

“Key Participant” means a sole proprietor, a partner in a partnership, or a person with executive managerial control in a corporation, such as a chief operating officer, chief executive director, and chief financial officer. This definition does not include non-executive managers, such as farm, field, or shift managers, or elected or appointed officials unless the official is part of management.

“Liquid chromatography” means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component of a mixture.

“Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. Also, “lot” means the batch of contiguous, homogenous whole of a product being sold to a single buyer at a single time.

“Manufacture” means the process of transforming a raw product by intentionally combining it with other materials or purposefully altering its state.

“Marijuana” means cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis, the seeds thereof, the resin extracted from any part of the plant, and every compound, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Marijuana does not include Hemp. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, and other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. See 21 U.S.C.A. §802 (16) (2014).

## Cannabis Control Act

“Measurement of Uncertainty” means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

“Negligence” means failure to exercise the level of care that a reasonable and prudent person would exercise.

“Non-Compliant Hemp” means cannabis plants that exceed the acceptable hemp THC level.

“Person” means an individual, a group, or an entity.

“Possession” means having knowing control of an item.

“Post-decarboxylation” means, in the context of testing methodologies for THC concentration levels in hemp, a value determined after the process of decarboxylation that determines the potential delta-9 THC content derived from the sum of the THC and THCA content reported on a dry weight basis.

“Remediation” means the process of rendering non-compliant cannabis compliant.

“Reverse Distributor” means a person who is registered with the Drug Enforcement Agency in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

“Secretary” mean the Secretary of the United States Department of Agriculture.

“THC” means delta-9 tetrahydrocannabinol.

“Tribal Council” mean the governing body of the Ute Mountain Ute Tribe as described in the Tribe’s *Constitution and By-Laws*.

“Tribal Court” means the Court of Indian Offenses, Ute Mountain Ute Agency, or any other court authorized by the Tribal Council to assert jurisdiction over matters related to this Act.

“Tribal Lands” means Fee Lands, Allotments, and Reservation Lands of the Ute Mountain Ute Tribe.

“Tribal Law” means the laws of the Tribe as amended, including but not limited to this Act, official Resolutions that are in effect, and the Tribal Law and Order Code.

“Tribe” means the Ute Mountain Ute Tribe.

“USDA” means the United States Department of Agriculture.

## Cannabis Control Act

“USDA Licensee” means a person, partnership, or corporation licensed under the US Department of Agriculture plan to grow hemp.

### TITLE II. CANNABIS REGULATORY COMMISSION

#### 2.01 Commission Established

The Cannabis Regulatory Commission is hereby created as a function of this Act and will remain in effect until this Act is amended or until further action of the Tribal Council. The Commission is a sovereign arm of the Tribal Government with authority to implement and enforce the requirements of this Act. The Commission is not an elected body and Members are selected and appointed by the Tribal Council and serve at the discretion of the Tribal Council. The Commission is regulated by the Tribe’s *Ethics Code*, or all other Tribal regulations intended to apply to appointed officials of the Tribe.

The Commission may utilize the administrative services of the Tribe, such as, but not limited to, the Finance Department, Human Resources Department, and the Justice Department, and is regulated by the Tribe’s administrative policies such as, but not limited to, the *Constitution and By-Laws, Personnel Policies and Procedures Manual*, and the procurement policies.

#### 2.02 Commission Roles and Responsibilities

##### a) Licensing

The Commission is responsible for ensuring that no license or permit related to cannabis production is issued that does not fully comply with the terms of this Act and that all related Licensee’s comply with the requirements of this Act. The Commission has the authority to issue fines, penalties, and hearing process documents as set forth in this Act.

##### b) Protocols, Forms, and Notices

The Commission may establish and implement protocols, create forms, set times of operation, issue notices, establish fees, and perform all functions relevant to the execution of these rules and regulations.

##### c) Amendments to this Act and By-Laws

The Commission may suggest changes to this Act and its By Laws, but the Commission may not amend this Act or its By Laws without approval of the Tribal Council. Amendments to this Act and By-Laws do not take effect until approved by the Tribal Council.

## Cannabis Control Act

### d) Enforcement and Compliance

The Commission is authorized to retain trained inspectors and agents in order to conduct inspections and reviews required to ensure Licensee's are in compliance with this Act. The Commission must issue fines and penalties as set forth in this Act when applicable and may conduct hearings for this purpose.

### e) Testing Protocols and Facilities

The Commission must ensure that all testing is performed using procedures set forth in this Act and that all facilities utilized by Licensee's are properly certified.

## 2.03 Membership

### a) Number and Appointment

The Cannabis Regulatory Commission is comprised of 7 Members appointed by the Tribal Council. At least one Member must be a duly enrolled Member of the Tribe residing in Towaoc, at least one other Member must be a duly enrolled Member of the Tribe residing in White Mesa, and at least one Member must be a duly enrolled Member of the Tribe serving at-large (Towaoc, White Mesa, or off-reservation). There may be as many ex-officio and liaison positions as the Tribal Council determines is necessary for the efficient and effective operations of the Commission.

### b) Qualifications

No Member of the Commission may have ever been convicted of a felony or any offense involving misuse or illegal possession a controlled substance. No Member of the Commission may be on probation or parole for any drug-related offense while sitting on the Commission. Members who are charged with a crime during the term of their membership that would prevent them from sitting on the Commission if convicted may be recused or removed at the discretion of the remaining Members of the Commission, as set forth below, or by the Tribal Council acting by Resolution.

No Member of the Commission may have ever been removed from any other commission or board for improper behavior.

No Member of the Commission may apply for or hold a License issued by the Commission while sitting as a Member of the Commission.

No Member of the Commission may sit on the Commission while under sanction imposed pursuant to this Act, such as, but not limited to, restraints on acquiring a License under this Act.

## Cannabis Control Act

### c) Terms

Each Member serves a term of three years with the initial terms to be staggered for 1, 2 and 3 year terms as determined by the Commission at its first meeting or as soon as practicable. Members are not prohibited from serving multiple terms.

### d) Resignation and Removal

Any Member of the Commission may resign at any time by sending a written notice of resignation to the Chairman of the Commission.

Any Member may be removed from the Commission by a 2/3 vote of the remaining Members when the Members of the Commission determine:

- i) That the Member has failed to appear for three consecutive regular meetings without notice and reasonable excuse;
- ii) That the Member has a conflict of interest that prevents the Member from acting effectively on the Commission and refuses to recuse himself;
- iii) That the Member has violated the rules pertaining to the Commission and such violation is worthy of removal;
- iv) That the Member has been charged with a crime that, if convicted, would prohibit them from sitting on the Commission; or
- v) That there is other justifiable cause to remove the Member and the removal is endorsed by the Chairman of the Tribal Council.

### 2.04 Officers

The Commission is comprised of a Chairman, Vice Chairman, and Secretary to be selected once per year or upon the resignation or removal of an Officer.

The Chairman will preside over all meetings of the Commission and may move and vote as a Member. The Chairman is responsible for ensuring that the Commission meets its obligations under this Act and performs all duties effectively.

The Vice Chairman will assume the duties of the Chairman in the absence of the Chairman.

The Commission Secretary will keep minutes of all meetings, assuring the documentation of all attendees, all motions and abstentions, and all matters of importance during meetings. The Commission Secretary will maintain a file of all documents produced or secured by the



## **Cannabis Control Act**

Commission and will provide such documents to the Tribal Administration as requested. The Commission Secretary will ensure that all reports required to be filed by the Tribe under the Hemp Program Plan will be filed on time and will be accurate and comprehensive.

### 2.05 Meetings

“Regular” meetings of the Commission will occur at intervals established from time to time by the Commission, but no less frequently than once per month. “Special” meetings of the Commission may be called at any time by the Chairman of the Commission or by any two Members of the Commission upon proper notice to the other Commissioners.

Meetings may be attended and action may be taken by the Commission in any manner that is reasonable to the Commission, such as telephonic attendance or voting by electronic mail, but only so long as the procedures for the attendance of meetings and taking action have been approved by the Tribal Council acting by official Resolution. Until such procedures are approved by the Tribal Council, all meetings must be in person (unless otherwise authorized by the Chairman of the Tribal Council) and all actions must be while a quorum is present.

### 2.06 Quorum and Action

Unless the Commission submits alternative rules and such rules are approved by Resolution of the Tribal Council, actions by the Commission must be supported by motion and a majority vote of the Members present at a meeting of the Commission where a majority of the Members are present. Any Commissioner may abstain from voting on any action of the Commission, but such abstention must be supported by reasonable cause and the name of the Member abstaining and the basis for the abstention must be recorded into the minutes of the meeting.

### 2.07 Conflicts of Interest and Recusal

No Member of the Commission may participate in discussions or investigations related to any matter which will have a direct or indirect impact on an interest of the individual Member – or that may appear to have such an impact – to such an extent that the Member’s ability to render a fair and impartial decision on the matter is reasonably questionable. Matters which affect all the Members of the Commission fairly equally or that affect all Members of the Tribe may not form the basis for recusal due to the conflict of interest unless the Commission Member recusing himself decides otherwise.

### 2.08 Powers of the Commission

In addition to any other powers granted by the Tribal Council, the Commission has the authority to enforce the provisions of this Act, including the power to file complaints and levy fines, fees, and costs, to subpoena persons and records, to call hearings, to examine witnesses and documents, to conduct investigations, to recommend legislation to the Tribal Council, and to manage the budget established for the Commission.

## **Cannabis Control Act**

### a) Complaints

As set forth in this Act, the Commission has the authority to issue complaints to persons or entities believed to be in violation of this Act and to force such alleged violators to answer the complaint or face the penalties of default. The Commission must establish and maintain procedures for this purpose which will not be in effect until approved by the Tribal Council.

### b) Fines, Fees, and Costs

The Commission may impose and collect fees as set forth in this Act in such amounts as to defray the actual costs of performing its duties under this Act. Costs, as opposed to penalties, may be imposed on those violating this Act, so long as such costs are reasonable and directly related to costs incurred in enforcing this Act against violators. In order to ensure consistency, the Commission must establish a schedule of fines to be imposed for violations of this Act and set the fines in amounts that are reasonably calculated to address damages caused by such violations and that are likely to deter such behavior in the future.

### c) Subpoena Power

The Commission is authorized to issue subpoenas in its name in order to secure the presence of witnesses for hearings and to obtain records and objects reasonably necessary for the conduct of an investigation. Parties seeking subpoenas for hearings set by the Commission may utilize the authority of the Commission to execute and enforce the subpoenas.

### d) Conduct Hearings

As set forth in this Act, the Commission has the authority to call hearings and to compel the attendance of the accused and witnesses and the production of documents and tangible things. The hearing will be conducted by rules established by this Act and the Commission and must adhere to the strictest principles of due process and fairness under Tribal Law. Hearings are not open to the public, but a reliable and audible recording must be made of the hearings for appeal purposes; however, the failure to make and retain a recording may not be used as a basis to determine the merits of an appeal. Parties to a hearing may utilize attorneys at their discretion and at their cost.

### e) Budget

The Chairman of the Commission is responsible for ensuring that a budget is prepared and submitted to the Tribal Council each year in a manner established annually by the Tribe. The proposed budget must include all known and reasonably anticipated expenses of the Commission including supplies and overhead, travel costs, training, and other reasonably related expenses, as well as a calculation of anticipated revenues. The

## Cannabis Control Act

Commission may seek grants and other forms of funding from third parties so long as applications for such funds are approved by the Tribal Administration.

### f) Inspections

The Commission must ensure that each Licensee is conducting their operations in compliance with this Act and may do so by conducting regular and random inspections. No notice is required before an inspection and all Licensee's must allow the Commission inspectors to observe operations, inspect the premises, review records, and conduct any other activity reasonably related to ensuring compliance.

### g) USDA Compliance

The Commission must ensure this Act is in compliance with USDA regulations and must properly and promptly address any compliance matters that result from USDA audits or other federal and Tribal mandates. If the Act must be amended in order to comply with federal law, an adverse audit finding, or federal and Tribal mandates, then the Commission must immediately notify the Tribal Council of the required changes.

## 2.09 Procedures

The Commission may establish procedures not already established by this Act for the conduct of its business, including a schedule for fees and fines, procedures for meetings and hearings, and By-Laws. Such procedures are not effective until approved by Resolution of the Tribal Council, but may be adhered to before a Resolution is approved so long as a draft of the procedures has been submitted to the Tribal Council and is scheduled to be heard by the Tribal Council. Once approved by the Tribal Council, the procedures must be published at the Tribal Administration Buildings in Towaoc and White Mesa and be available for review by the public at large.

## 2.10 By-Laws

As soon as practicable after its first meeting, the Commission must draft By-Laws for consideration by the Tribal Council. Amendments to the By-Laws may be suggested to the Tribal Council when necessary and no amendment will be in effect until approved by the Tribal Council.

## 2.11 Public Notification

This Act, the Program Plan, the schedule of fees, meeting dates and times, and all proposed amendments thereto must be posted at the offices of the Commission and the Tribal Administration buildings in Towaoc and White Mesa in such a manner that they can be easily reviewed by members of the public during regular business hours.

## Cannabis Control Act

### TITLE III. MARIJUANA LICENSES

#### 3.01 Marijuana Prohibited

Possession, cultivation, distribution, and manufacture of marijuana and marijuana products are prohibited on Tribal Lands under this Act unless specifically authorized by the Tribal Council by Resolution. .

### TITLE IV. HEMP LICENSES

#### 4.01 Non-Compliant Hemp Prohibited

So long as the possession of cannabis and cannabis products containing greater than 0.3% THC are prohibited under federal law, such possession is prohibited by this Act. This Act must be amended before the cultivation, possession, or manufacture of cannabis or cannabis products containing greater than 0.3% THC are legal on the Ute Mountain Ute Reservation regardless of whether the federal regulations pertaining to such activities are ever changed.

#### 4.02 Licenses Available

There are six types of Tribal hemp licenses (Industry, Importation, Cultivation, Distribution, Product Manufacture, and Transportation) and one type of permit (Tribal Permit for Off-Reservation Hemp Activities). If the Tribe's Hemp Program Plan is rejected, suspended, or terminated by the USDA for non-compliance with applicable federal laws and the Tribe has not prohibited the cultivation or possession of hemp, then hemp cultivators may seek a license from the USDA and operate under the regulations contained in this part regarding USDA licensees.

#### 4.03 Hemp Industry License

All persons engaging in any aspect of the cannabis industry on Tribal Lands must first obtain a Hemp Industry License, whether the person intends to import, cultivate, distribute, or manufacture hemp, or be employed by a person or entity intending to import, cultivate, distribute, or manufacture hemp. Hemp Industry Licenses do not include the authority to import, cultivate, distribute, or manufacture hemp. The purpose of requiring a Hemp Industry License is to ensure that all persons engaged in the cannabis industry pursuant to this Act meet minimal standards, such as character and criminal history.

#### 4.04 Hemp Import License

No person or entity may import hemp, hemp seed, or hemp product onto Tribal Lands for the purpose of utilizing, distributing, cultivating, or consuming the hemp, hemp seed, or hemp product without first obtaining a Hemp Import Licenses. Regulatory Commission Hemp Import Licenses do not include authorization for the cultivation, distribution, or manufacture of hemp.

## **Cannabis Control Act**

### **4.05 Hemp Cultivation License**

No person or entity may cultivate hemp on Tribal Lands without first acquiring a Hemp Cultivation License. Hemp Cultivation Licenses are for the cultivation of hemp and do not include authorization for the importation, distribution, or manufacture of hemp.

### **4.06 Hemp Distribution License**

No person may distribute hemp, hemp seeds, or hemp products on Tribal Lands without first obtaining a Hemp Distribution License from the Cannabis Regulatory Commission. A Hemp Distribution License is not necessary when the distribution is not for consideration and is to a friend or family member when the distributor did not cultivate or manufacture the product distributed. Hemp Distribution Licenses for the distribution of hemp, hemp seed or hemp products do not include authorization for the importation, cultivation, or manufacture of hemp.

### **4.07 Hemp Product Manufacturing License**

No person or entity may manufacture product from hemp or, hemp seed on Tribal Lands without first obtaining a Hemp Product Manufacturing License from the Cannabis Regulatory Commission. Hemp Manufacturing License do not include authorization for the importation, cultivation, or distribution of hemp.

### **4.08 Hemp Transport License**

No person or entity may transport hemp, hemp seed, or hemp product within or away from Tribal Lands without first obtaining a Hemp Transport License from the Cannabis Regulatory Commission. Hemp Transport Licenses do not include authorization for the importation, cultivation, manufacture, or distribution of hemp. This provision is not intended to prohibit the transport of hemp through the Tribal Lands when the hemp is not being delivered to a person or entity on the Tribal Lands. Delivery of hemp material to a person or entity on Tribal Lands will require a Hemp Distribution License.

### **4.09 USDA Licenses**

So long as this Act remains in effect and the Tribal Hemp Program Plan has not been suspended or revoked by the USDA, the only licenses that may be issued on the Ute Mountain Ute Reservation are the Hemp Industry Licenses, the Hemp Import Licenses, the Hemp Cultivation Licenses, the Hemp Distribution Licenses, and the Hemp Product Manufacturing Licenses. If this Act or the Tribal Hemp Program Plan is suspended, revoked, or terminated for any reason, then all licenses issued under this Act are similarly suspended, revoked, or terminated; however, if the Tribe has not prohibited the possession or cultivation of hemp, then any Hemp Cultivation Licensee may continue to operate for the remainder of the calendar year, but only so long as the Licensee obtains a license to cultivate hemp from the USDA in a reasonable period of time which authorizes the cultivation of hemp.

## Cannabis Control Act

Any person or entity who obtains a license from the USDA to cultivate hemp are subject to applicable Tribal laws. Additionally, before hemp cultivation may occur on Tribal Lands without a License issued by the Commission, a prospective grower must obtain consent from the Tribe in order to grow hemp on Tribal Lands in order to ensure the activities do not conflict with any other Tribal operation or land rights held by another.

### 4.10 Tribal Permit for Off-Reservation Hemp Activities

Any person or entity seeking to conduct hemp activities on lands owned by the Tribe within state jurisdiction must obtain a Tribal Permit for Off-Reservation Hemp Activities from the Regulatory Commission before activities may commence. The Regulatory Commission may not issue a Permit until the following criteria have been met:

- a) The person or entity has obtained permission from the Tribal Council to occupy the Tribal lands;
- b) The person or entity is in and remains in compliance with the state licensure;
- c) The person or entity is conducting an activity that is permissible under the Hemp Program Plan and the Tribe's *Cannabis Control Act*; and
- d) The person or entity is not conducting any activity involving marijuana.

### 4.11 License and Permit Suspension

- a) If, after the issuance of a license or permit, the Regulatory Commission receives reliable information indicating that a hemp license or permit holder is in violation of this Act or fails to comply with an order issued by the Commission, the Commission must suspend such license or permit and notify in writing the Licensee or Permittee of the suspension and the possible revocation.
- b) Any Licensee or Permittee whose license or permit has been suspended under this section may not handle or remove hemp, Cannabis, or any hemp or cannabis product from the location where hemp or cannabis was located at the time the notice of suspension was issued without prior authorization from the Commission.
- c) Any Licensee or Permittee who has received notice of a license or permit suspension may not continue to operate under any license or permit issued by the Commission until further notice by the Commission or until all suspensions have been lifted.
- d) Unless a suspended license or permit has been reinstated, no Licensee or Permittee receiving a notice of suspension is eligible to apply for a subsequent license or permit within 1 year of the suspension.

## Cannabis Control Act

### 4.12 License and Permit Revocation

The Commission must immediately revoke a License or Permit issued under this Act when:

- a) The Licensee or Permittee has plead guilty or *no lo contendere* to, or been convicted of a felony related to the controlled substance laws of any jurisdiction within the United States;
- b) It is determined by the Commission that the Licensee or Permittee made a materially false statement to the Commission with a culpable mental state greater than negligence;
- c) The Licensee or Permittee produces hemp that exceeds the Acceptable Hemp THC Level with a culpable mental state greater than negligence; or
- d) The Licensee or Licensee produces hemp that exceeds the Acceptable Hemp THC Level with a negligent mental state 3 times within 5 years.

### 4.13 Hearing for Suspended or Revoked Licenses and Permits

a) Before the Commission may impose any sanction under this Act, including the immediate suspension or revocation of a license or permit, the Commission must provide notice to the Licensee or Permittee. For each Licensee or Permittee who is a subject of the Notice, the Notice of Violation must contain the following information:

- i) The name, address, and phone number of the Licensee or Permittee;
- ii) The violations allegedly committed by the Licensee or Permittee and the status of the License or Permit after notification (if immediately suspended or revoked);
- iii) The dates of the violations;
- iv) The actions that must be taken to remediate the violation, if any, and the timeframe within which to achieve the remediation;
- v) The potential fines and sanctions that may be imposed (or are being imposed) for the violation;
- vi) A statement that the remediation efforts or any other action taken by the Notice will be immediately in effect unless the Licensee or Permittee requests a hearing on the Notice within 5 business days of receipt of the Notice;
- vii) A statement that failure to request a hearing may result in the denial of an appeal of the actions taken by the Commission;

## Cannabis Control Act

viii) A statements that if a hearing is requested, the Licensee or Permittee will be granted reasonable access to their public file and all other documents and witnesses that will be presented at the hearing on behalf of the Commission at least 5 business days prior to the hearing; and

ix) A statements that if a hearing is requested, the Licensee or Permittee must provide to the Commission access to all documents and witnesses that will be presented at the hearing on behalf of the Licensee or Permittee at least 5 business days prior to the hearing.

b) If the Licensee or Permittee requests a hearing within the timeframe set forth in the Notice, or upon a greater period of time approved by the Commission for good cause, the Commission must set a license or permit revocation hearing within 10 to 30 days of the Notice. The timeframe may be extended by the Commission or the Licensee or Permittee for good cause.

c) At the hearing, the Commission must determine whether the facts as alleged are proven by a preponderance of the evidence and support a revocation of the Licensee's or Permittee's hemp license or permit as the case may be. If the allegations are properly supported and the Commission determines a sanction is appropriate, then the Commission must immediately revoke the Licensee's or Permittee's hemp license or permit, suspend the license or permit for a definite period of time, impose additional sanctions per the fine schedule, or put conditions on the license or permit that address the findings and implement corrective actions.

d) If any of the findings that are supported by a preponderance of the evidence would have prevented the Licensee or Permittee from obtaining a license upon application, then the Licensee's or Permittee's hemp license or permit must be revoked.

e) Unless a revoked license or permit is permanently revoked, the Licensee or Permittee may re-apply for a hemp license or permit when circumstances allow.

### 4.14 License Location

The Cannabis Regulatory Commission must issue a separate license or permit to each place, facility, or location on Tribal Lands where a hemp Licensee or Permittee conducts activities under this Act. The Commission must retain a copy of all licenses and permits issued and Licensee's and Permittee's must post their license or permit in a conspicuous place at the location where the activity under the license or permit will occur such that the license or permit is easily reviewable by the public and inspectors.

### 4.15 Term

No license or permit issued under this Act may be issued for a term greater than December 31 of the year of when the license or permit was issued, regardless of any term of suspension of the license or permit.



## **Cannabis Control Act**

### 4.16 Clearances

All hemp Licensees and Permittees are required to pay and comply with all applicable Tribal fees and licensing and permitting protocols, including, but not limited to, Tribal Employment Rights Office fees and assessments, Environmental Program guidelines and regulations, and Tribal Historic Preservation Office guidelines and regulations.

### 4.17 Licenses and Permits Not Transferrable

Licenses and permits cannot be assigned or transferred to another person or entity.

### 4.18 Multiple Licenses and Permits

Each person cultivating, manufacturing, distributing, transporting, or importing hemp will be required to have a Hemp Industry License and any other license or permit applicable to the Licensee's operations such that a single Licensee may be required to hold several licenses or permits. For instance, a person cultivating hemp from imported seed for the purpose of manufacturing and selling a consumable hemp product on and off Tribal lands will be required to obtain a Hemp Industry License, a Hemp Import License, a Hemp Cultivation License, a Hemp Product Manufacturing License, and Hemp Distribution License, and a Hemp Transport License.

### 4.19 License Numbering

The USDA has established a License Numbering Scheme for Tribal hemp projects that includes the Department of Interior's Identification Code for Tribal Governments followed by the Tribe's License Number. For the Ute Mountain Ute Tribe, the Tribal Government Identification Code is M45754, so License Numbers under the Tribe's hems licenses will be numbered as follows [M45754\_####].

## **TITLE V. APPLICATIONS**

### 5.01 Marijuana Application

The import, manufacture, distribution, transport, and possession of marijuana and marijuana products is not permissible on Tribal Lands and there is no process to receive a license under this Act for marijuana activities.

### 5.02 Applications Generally

Any person wishing to import, cultivate, distribute, transport, or manufacture hemp, hemp seeds, or hemp products onto or on Tribal Lands may not do so without a license or permit, as the case may be, issued by the Cannabis Regulatory Commission. Applications for licenses and permits must be made on a form provided by the Commission and the applicant must pay applicable processing fees. The Commission may require information in addition to that listed below.

## Cannabis Control Act

If the Applicant is a person, they must provide the following information for all license and permit categories:

- a) Name, address, telephone number, electronic mail address (if available);
- b) Date of birth;
- c) Tribal Affiliation, if any; and
- d) A list of previous and current licenses and permits held in all jurisdictions and a sworn statement under oath that none of the licenses or permits listed has been revoked or suspended in any other jurisdiction. If the Applicant is unable to provide such a statement, then a description of the jurisdiction in which the license or permit was suspended or revoked and the conditions of the suspension or revocation.

If the Applicant is an organization or other legal entity, it must provide:

- a) Name of the organization or entity, principle business location, telephone number, and electronic mail address (if any);
- b) Names of the owners of the Entity and their Tribal affiliation, if any;
- c) Government where incorporated, chartered, or formed;
- d) Articles of Incorporation, Charter, or other formation documents;
- e) Employer identification number, if any;
- f) Names of all Board Members, their titles, and addresses;
- g) Names and titles of all employees;
- h) Name and address of President or responsible individual;
- i) A list of previous and current licenses and permits held in all jurisdictions by the Applicant and any of its key personnel, and a sworn statement under oath that none of the licenses or permits listed have been revoked or suspended in any other jurisdiction. If the Applicant is unable to provide such a statement, then a description of the jurisdiction in which the license or permit was suspended or revoked and the conditions of the suspension or revocation.

### 5.03 Application for a Hemp Industry License

No person may work in the cannabis industry on Tribal Lands without first obtaining a Hemp Industry License. In order to be eligible for a Hemp Industry License, the following

## Cannabis Control Act

information must be provided to the Cannabis Regulatory Commission in addition to the information listed in Section 5.02:

- a) A current criminal background check for the Applicant; and
- b) The name of the Licensees for whom the Applicant will be employed, if known.

### 5.04 Application for a Hemp Import License

In order to be eligible for a Hemp Import License, the following information must be provided to the Cannabis Regulatory Commission in addition to the information required by Section 5.02:

- a) A description of how the hemp will be acquired, including the names and addresses of all persons providing the hemp;
- b) The names and addresses of all persons who will be importing or handling the hemp during and after the importation onto Tribal Lands;
- c) The Hemp Industry License numbers for all persons who will be importing or handling the hemp during and after the importation onto Tribal Lands;
- d) The intended use of the imported hemp;
- e) The dates of importation and the manner imported, if known;
- f) The location of the hemp once it is imported and all places where it may be stored;
- g) Copies of all other permits obtained related to the importation regardless of the origin of the permits;
- h) Security plan for the location of the plants, including the location of security cameras, walls, fences, and fixtures; and
- i) A warranty that no person under the age of 21 years will be allowed to participate in the importation or be allowed into any import facilities.

### 5.05 Application for a Hemp Cultivation License

In order to be eligible for a Hemp Cultivation License, the following information must be provided to the Cannabis Regulatory Commission in addition to the information required by Section 5.02 at least 30 days prior to planting:

- a) A Completed Grow Site Registration Application approved by the Tribal Council providing evidence that Applicant has the right to occupy and grow hemp on the lands where hemp will be cultivated;

## Cannabis Control Act

- b) Location of the cultivation with GPS coordinates or geospatial location;
- c) Map of location with precise acreage indicating all points of access to the farm and structures whether needed for cultivation or not;
- d) Types of plants to be cultivated;
- e) Estimated numbers of plants to be cultivated;
- f) Estimated dates of planting and harvesting;
- g) Names and addresses of all persons who will be participating in the cultivation of the plants;
- h) The Hemp Industry License numbers for all persons who will be participating in the cultivation of the plants;
- i) Security plan for the location of the plants, including the location of security cameras, walls, fences and fixtures;
- j) The location and design of all structures related to the cultivation which are situated in the area of cultivation;
- k) The intended use of the plant once harvested;
- l) Documented process for the cultivation that is not otherwise proprietary;
- m) Copies of all other permits obtained related to the cultivation regardless of the origin of the permits; and
- n) A warranty that no person under the age of 21 years will be allowed to participate in the cultivation or be allowed into any cultivation facilities.

### 5.06 Application for a Hemp Distribution License

In order to be eligible for a Hemp Distribution License, the following information must be provided to the Cannabis Regulatory Commission in addition to the information required by Section 5.02:

- a) A description of how the Applicant will obtain the hemp to be distributed;
- b) A description of the persons to whom the hemp will be distributed, if known;
- c) The purpose of the distribution;

## Cannabis Control Act

- d) Whether the distribution is for consideration, a gift, or an obligation;
- e) The location of the distribution;
- f) The location of the storage of the hemp, hemp seed, or hemp product before distribution;
- g) A security plan for the distribution facility, along with the locations of all cameras, walls, and entry points;
- h) The name, address, and date of birth of all persons distributing or assisting in the distribution;
- i) The Hemp Industry License numbers for all persons who will be participating in the distribution of the hemp;
- j) Copies of all other permits obtained related to the cultivation regardless of the origin of the permit; and
- k) A warranty that no person under the age of 21 years will be allowed to participate in the distribution or be allowed into any distribution facilities.

### 5.07 Application for a Hemp Manufacturing License

In order to be eligible for a Hemp Manufacturing License, the following information must be provided to the Cannabis Regulatory Commission in addition to the information required by Section 5.02:

- a) A description of how the hemp was obtained for manufacture, including a list of the names and addresses of all persons or entities providing the hemp for processing;
- b) The types of hemp and the parts of the Hemp Program Plant involved in the manufacturing;
- c) The products being manufactured along with their commercial name and percent THC and CBD contained in the product, as well as the percentages of any other chemicals targeted in the manufacture;
- d) The names, addresses, and dates of birth of all persons involved in the manufacture;
- e) The Hemp Industry License numbers for all persons involved in the manufacture;
- f) The location of the manufacturing facility with an internal and external map of the facility;

## **Cannabis Control Act**

- g) A security plan for the facility, indicating the location of all walls, cameras, and entry points;
- h) Copies of all other permits obtained related to the manufacture regardless of the origin of the permits; and
- i) A warranty that no person under the age of 21 years will be allowed to participate in the distribution or be allowed into any distribution facilities.

### 5.08 Consent to Comply Implied

Each person applying for a license under this Act, in doing so, consents to comply with the requirements of this Act.

## **TITLE VI. CRIMINAL HISTORIES**

### 6.01 Background Investigation

The Cannabis Regulatory Commission or its delegate will review an Applicant's prior activities, criminal record, if any, and reputation, habits, and associations in order to make a finding concerning the eligibility of the Applicant for a hemp license. If the Commission or its delegate determines that issuing a license to the person poses a threat to the public interest or to the effective regulation of the hemp industry, or creates or enhances dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of such activities, the person may not work under the authority of a hemp license. The Commission or its delegate may conduct a similar investigation of key participants of the licensees upon reasonable belief that the employees may not be suitable for employment in the hemp industry on Tribal Lands.

### 6.02 Confidentiality

Unless the Commission discovers a violation of this Act or a violation which would require notification to law enforcement authorities, the result of the investigation by the Commission into the background of employees working under a valid license is confidential and may only be used for the purpose of determining compliance with this Act and eligibility to obtain or work under a hemp license.

### 6.03 Persons Prohibited from Participating

a) Any person convicted of a felony relating to a controlled substance under state, tribal, or federal law is ineligible to participate in any activity conducted pursuant to a valid hemp license during the 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.

b) A hemp Licensee that negligently violates this code or other state or Tribal plan or the USDA plan 3 times within a 5 year period is ineligible to participate in activities

## Cannabis Control Act

conducted under a valid hemp license for a period of 5 years beginning on the date of the third violation.

c) Any person found to have materially falsified any information contained in an application for a hemp license is permanently ineligible for a license.

d) Any person who is determined by the Commission to not possess the character necessary to obtain or work under a hemp license may be excluded from obtaining a license.

e) Any person under the age of 21 years.

### 6.04 Ongoing Duty to Report

Licensees must report any felony convictions for themselves, or their employees working under the License, relating to controlled substances under tribal, state, or federal law to the Commission within 5 business days of receiving notice of such conviction.

## TITLE VII. RECORDS AND REPORTING

### 7.01 Reporting by the Commission

The Commission must report the following information monthly to the Secretary, even when there is no new information to report:

#### 7.01.01 New Licenses to Individuals

For each new license issued to a person during the reporting period, the Commission must report the following information to the Secretary:

- a) Full name of the Licensee;
- b) License number;
- c) Employer Identification Number of the Licensee;
- d) The address of the Licensee;
- e) The telephone number of the Licensee; and
- f) The email address for the Licensee, if any.

#### 7.01.02 New Licenses to Entities other than Individuals

For each new license issued to an entity other than a person during the reporting period, the Commission must report the following information to the Secretary:

## Cannabis Control Act

- a) Full name of the Licensee;
- b) License number;
- c) The principal business address of the Licensee;
- d) The full name and title of each employee of the; and
- e) The email address if available, of each employee of the.

### 7.01.03 Current Licenses

For each new license issued to an entity other than a person during the reporting period, the Commission must report the following information to the Secretary:

- a) All changes to information on a current license;
- b) The status of each license currently in effect; and
- c) Any other license authorization issued to a current Licensee.

### 7.01.04 Remediation and Disposal Report

Within 30 days of disposal or remediation of non-conforming plants or plant materials, the Commission must report to the Secretary the following information related to the disposal and remediation of the non-conforming plants or plant materials during the reporting period:

- a) Name and address of the Licensee;
- b) License number;
- c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation;
- d) Disposal or remediation completion date;
- e) Total acreage involved; and
- f) Disposal or remediation record for those materials.

### 7.01.05 Reporting Period

The report must describe the time period covered by the report.



## Cannabis Control Act

### 7.01.06 Due Date

The report to the Secretary is due on the first of each month. If the first of the month falls on a weekend or holiday, the report is due the first business day after the weekend or holiday.

### 7.01.07 Form of Report

The report must be provided in a digital format consistent with the Secretary's information sharing system.

### 7.02 Annual Report

The Commission must submit an annual report to the Secretary by December 15 of each year containing the following information:

- a) Total acreage planted;
- b) Total acreage harvested; and
- c) Total acreage disposed and remediated.

### 7.03 Reporting by Licensees

#### 7.03.01 Planting and Harvesting Hemp

For each Hemp Cultivation Licensee, the following information must be reported to the Commission and the USDA:

- a) Within 30 days of planting, total hemp crop acreage planted (also must be reported to FSA and AMS), including:
  - i) Street address and, to the extent practicable, the geospatial location, for each lot or greenhouse where hemp will be produced; and
  - ii) Numbers of acreage dedicated to the production of hemp, and the greenhouse or indoor square footage dedicated to the production of hemp;
- b) Total hemp crop acreage harvested; and
- c) The Hemp Cultivation License Numbers under which the hemp is cultivated.

## Cannabis Control Act

### 7.03.02 Test Reports

Each Licensee with a Hemp Cultivation License must ensure the hemp is tested for total THC content by a laboratory approved by the Drug Enforcement Agency. Except for tests that are done during the growing season for the purpose of monitoring THC levels, the test results for each sample must be reported to the USDA within 10 days of the completion of the tests. The test result report must contain the following information:

- a) The Hemp Cultivation Licensee's License Number;
- b) The name of the Hemp Cultivation Licensee;
- c) The business address of the Hemp Cultivation Licensee;
- d) Lot identification number for the sample;
- e) The name of the laboratory and, no later than December 31, 2022, the DEA registration number for laboratory testing;
- f) The date of the test and the report;
- g) Identification or a pre-harvest or post-harvest test;
- h) The results of the test; and
- i) The measurement of uncertainty for the lot tested.

### 7.03.03 Disposal Reports

For each Licensee producing cannabis that exceeds the Acceptable Hemp THC Level, the cannabis will be disposed of in accordance with the *Controlled Substances Act* and DEA regulations found at 21 CFR 1317.15. By the first of each month, the Tribe will submit to USDA a report notifying USDA of any occurrence of non-conforming plants or plant material and provide a disposal record of those plants and materials. The report will include information regarding name and contact information for each producer subject to a disposal during the reporting period, and the date the disposal was completed. If the first of the month falls on a weekend or holiday, reports are due by the first business day following the due date. The report will contain the following information:

- a) Name and address of Licensee;
- b) License Number;
- c) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal;

## **Cannabis Control Act**

- d) Identifying information about the Cannabis Regulatory Commission agent monitoring the disposal, unless photos, videos, or other proof of disposal can be provided with the approval of the Cannabis Regulatory Commission;
- e) Disposal completion date; and
- f) Total acreage.

### 7.04 Records of the Licensees

#### 7.04.01 Maintenance of Records

All Licensees must keep records of all Hemp Program Plants, Hemp Program Plant materials, or hemp products acquired, produced, handled, disposed of, or remediated for at least 3 years.

#### 7.04.02 Inspection of records

All records must be made available to Commission and United States inspectors, auditors, and their representatives during reasonable business hours. The following records must be made available for each Hemp Program Plant, Hemp Program Plant material, and hemp products:

- a) Records regarding their acquisition;
- b) Records regarding their production and handling;
- c) Records regarding their storage; and
- d) Records regarding their remediation and disposal, when applicable.

## **TITLE VIII. SAMPLING, TESTING, AND DISPOSAL**

### 8.01 Sampling and Testing

Hemp Cultivation Licensees must ensure that no plant exceeds the Acceptable Hemp THC Level at harvest by complying with the following requirements:

#### 8.01.01 Sampling

Each Hemp Cultivation Licensee must sample each lot at least once prior to harvesting pursuant to the following procedures and the Sampling Guidelines for Hemp issued January 15, 2021 (If these guidelines conflict with the Sampling Guidelines, the Sampling Guidelines will supersede these guidelines):

## Cannabis Control Act

a) Within 30 days prior to harvest, samples of the plants must be collected by a USDA-approved sampling agent who must be a person other than the Licensee or an employee working at the growing facility being sampled. Names of approved sampling agents can be obtained from the Cannabis Regulatory Commission;

b) Samples must be obtained only from the flowering tops of the plants when flowering tops are present and must be approximately 5 to 8 inches on length from the “main stem” (that includes the leaves and flowers), the “terminal bud” (that occurs at the end of the stem), or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant;

c) The method used for sampling must be sufficient at a confidence level of 95% that no more than 1% of the plants in each lot would exceed the Acceptable Hemp THC Level and ensure that a representative sample is collected that represents a homogenous composition of the lot. Alternatively, a performance-based sampling method may be utilized that ensures, at a confidence level of 95%, that the cannabis plant *Cannabis sativa L.* will not test above the Acceptable Hemp THC Level and may consider one or more of the following factors:

i) Seed certification process or process that identifies varieties that have consistently demonstrated to result in a compliant hemp plants in the state of Tribal territory;

ii) Whether the Licensee is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State or Tribal government;

iii) Whether a Licensee has consistently produced compliant hemp over an extended period of time; or

iv) Factors similar to those in this section;

d) The Hemp Cultivation Licensee or their representative must be present during the sampling;

e) The agent collecting the sample must be trained using Tribal, Colorado State, or USDA training procedures;

f) Agents trained to collect samples must be provided complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to 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 Licensee’s license;

g) A Hemp Cultivation Licensee may not harvest the cannabis crop prior to samples being taken;

## Cannabis Control Act

- h) Samples of hemp material from one lot may not be comingled with samples from another lot;
- i) Sample preparation of pre- or post-harvest samples must require grinding of the sample in order to ensure homogeneity of plant material prior to testing; and
- j) For lots of less than one acre, including greenhouses, sampling agent must select a minimum of one plant to sample. For lots of 1 to 10 acres, including greenhouses, follow the chart included in the Sampling Guidelines for Hemp issued January 15, 2021. For growing areas larger than 10 acres, including greenhouses, the number of plants should be selected to form a composite sample based upon the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999.

### 8.01.02 Testing

Each Hemp Cultivation Licensee must test each plant at least once prior to harvesting for total delta-9 tetrahydrocannabinol concentration pursuant to the following procedures:

- a) The testing procedure must include a validated testing methodology that uses post-decarboxylation or other similarly reliable methods;
- b) The testing methodology must consider the potential conversion of THCA in hemp to THC and the result must report the total available THC derived from the sum of the THC and THCA content;
- c) Testing methodologies include, but are not limited to, gas or liquid chromatography with detection;
- d) The total THC concentration must be determined and reported on a dry weight basis;
- e) Any test of a representative sample resulting in a higher than Acceptable Hemp THC Level is conclusive evidence that the lot represented by the sample is not in compliance with this Act and must be disposed of or remediated in accordance with this Act; and
- f) The measurement of uncertainty must be estimated and reported with the test results.

## Cannabis Control Act

### 8.02 Testing Laboratories

a) The Tribe will ensure that each Licensee will utilize only DEA-registered laboratories to conduct the testing of the samples from its lots or other materials and reports the test results for all samples tested to the USDA.

b) When a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty to the Licensee and the Tribe's Cannabis Regulatory Commission and conform to all other federal regulatory requirements as necessary, such as but not limited to:

i) Laboratory quality assurance must ensure the reliability and validity of test results;

ii) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate for the purpose, and that the laboratory can successfully perform the testing;

iii) The demonstration of testing validity must ensure consistent, accurate analytical performance;

iv) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan;

v) Effective disposal procedures for non-compliant samples that do not meet the requirements of this Plan;

vi) Measurement of uncertainty must be estimated and reported with the test results. Laboratories must use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty;

vii) Sample preparation pre- and post-harvest must require grinding of samples to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by the USDA; and

viii) Only laboratories registered with the DEA may conduct testing under this Plan.

### 8.03 Remediation and Disposal

Plants which test above the Acceptable Hemp THC Level must be disposed of or remediated in order to bring the lot under Acceptable Hemp THC Levels.

#### 8.03.01 Generally

## Cannabis Control Act

- a) Licensees must verify disposal or remediation by submitting required documentation to the USDA with a copy to the Commission;
- b) Licensees must make all records related to disposal or remediation available for inspection by the Cannabis Regulatory Commission, the USDA, auditors, or their representatives during reasonable business hours;
- c) Verification of remediation or disposal may be in the form of in-person observation by the Cannabis Regulatory Commission's authorized representative, or by providing pictures, videos, or other proof that disposal or remediation occurred successfully;
- d) If remediation is not successful, the remaining plants and plant materials must be destroyed and rendered incapable of entering the market; and
- e) Upon notification that a lot has tested above the Acceptable Hemp THC Level, the Licensee must notify the Commission of the Licensee's decision to either destroy or remediate the non-compliant lot in accordance with the Tribal Hemp Program Plan and the process which will be implemented to execute the disposal or remediation.

### 8.03.02 Disposal

There are two methods for disposal of non-compliant plant materials: disposal by a reverse distributor and disposal by on-farm activities. Either means of disposal is acceptable under this Act, and the Licensee must inform the Cannabis Regulatory Commission of the method to be utilized before disposal may occur.

- a) Disposal of non-compliant plants and plant material must be conducted by a DEA-registered reverse distributor or law enforcement officer, or can be done on site at the location of the cultivation; and
- b) Disposal may be achieved by performing any one or combination of the following on-farm activities; plowing under, mulching, composting, disking, bush mowing, deep burial, and burning.

### 8.03.03 Disposal by Reverse Distribution

Any person that reverse distributes hemp material must be registered with the DEA as a reverse distributor, unless exempted by law or otherwise authorized pursuant to 21 CFR Part 1317. A reverse distributor must acquire the hemp material from a Licensee pursuant to 21 CFR §§ 1317.05 and 1317.55(a) and (c) in the following manner:

- a) Pick-up the hemp material from a Licensee at the Licensee's registered location or authorized collection site; or

## Cannabis Control Act

- b) Receive the hemp material delivered by common or contract carrier or delivered directly by a non-practitioner.
  - i) Delivery to the reverse distributor by a Licensee directly or by common or contract carrier may only be made to the reverse distributor at the reverse distributor's registered location. Once *en route*, such deliveries may not be re-routed to any other location or person, regardless of registration status.
  - ii) All deliveries to a reverse distributor may only be personally received by an employee of the reverse distributor at the registered location.
- c) Upon acquisition of the hemp material by delivery or pick-up, a reverse distributor must:
  - i) Immediately store the hemp material in accordance with the security controls in parts 1301 and 1317 of 21 CFR at the reverse distributor's registered location or immediately transfer the hemp material to the reverse distributor's registered location for secure storage in accordance with the security controls in parts 1301 and 1317 of 21 CFR until timely destruction or prompt return of the hemp material to the Licensee or other person authorized by the Licensee to accept returns or recalls on the Licensee's behalf;
  - ii) Promptly deliver the hemp material to the Licensee or another person authorized by the Licensee to accept returns or recalls on the Licensee's behalf; or
  - iii) Timely destroy the hemp material in a manner authorized by federal law;
- d) A reverse distributor must destroy or cause the destruction of any hemp material received for the purpose of destruction no later than 30 calendar days after receipt;

### 8.03.04 Remediation

Remediation must be done by the Licensee, the Commission, or by the USDA, and, regardless of the party who remediates the non-compliant plants and plant materials, compliance with this provision is the responsibility of the Licensee.

- a) Non-complaint Hemp Program Plants may be remediated by:
  - i) Separating and destroying non-compliant flowers, while retaining stalks, leaves, and seeds;



## Cannabis Control Act

- A) The flowers, including the buds, trichomes, “trim”, and “kief”, must be removed from the lot and destroyed as described in the Tribe’s Hemp Program Plan;
  - B) The stalks, leaves, and seeds must be separated from the non-compliant floral material and clearly labeled and demarcated as “hemp for remediation purposes” or some similar notation; and
  - C) Seeds removed for remediation purposes may not be used for propagative purposes; or
- ii) Shredding the entire plant to create “biomass”.
- A) All flowers, buds, trichomes, leaves, stalks, and all plant parts from a lot must be chopped or shredded in such a way as to create a homogenous, uniform blend of the lot;
  - B) Lots must be kept separate and not be combined during this process;
  - C) The biomass must be sampled and tested to ensure the biomass material test within Acceptable HEMP THC Levels before it may enter the stream of commerce; and
  - D) If the biomass tests above the Acceptable Hemp THC Level, then it must be disposed of;
  - E) The remediated biomass must be separated from any compliant hemp stored in the area and clearly labelled and demarcated as “hemp for remediation purposes” or similar notation and all lots subject to remediation should be stored, labelled, and demarcated apart from each other and from other compliant hemp lots stored or held nearby; and
  - F) Remediated lots should not leave the stored area until there is a test result showing compliance with the Acceptable Hemp THC Level is received or until the biomass will be destroyed.
- b) Resampling and re-testing remediated plants and plant materials.
- i) Remediated biomass must be resampled and retested before entering the stream of commerce;
  - ii) Biomass that fails the re-testing must be destroyed;

## **Cannabis Control Act**

iii) Samples must be taken from various depths, locations, and containers in the labelled and demarcated area in order to collect a representative sample of the material using the procedure set forth in this Section;

iv) The samples must be at least 750 ml or three standard measuring cups of biomass material. If 750 ml is not available, then a representative sample must be taken; and

v) The results of the re-testing must be maintained for 3 years from the date of re-testing.

### **8.04 Fees and Costs**

Licensees are responsible for paying all costs for sampling, testing, remediation, and disposal as applicable.

## **TITLE IX. LABELLING AND TRANSPORTATION**

### **9.01 Certification**

Before any Hemp Program Plant, Hemp Program Plant material, or product containing hemp may leave the facility where it is grown or produced, it must carry a certification from the Commission that the plant, plant material, or product was cultivated or manufactured under the laws of the Tribe and does not contain any material that exceeds the Acceptable Hemp THC Level.

All Licensee's who cultivate, manufacture, import, or distribute hemp or hemp product must present the certification upon request as required for the transport or possession of the materials.

### **9.02 Records and Reporting**

All Licensee's who cultivate, manufacture, import, or distribute hemp must keep a record of all Hemp Program Plants, Hemp Program Plant materials, and hemp product (collectively "hemp") that is in their possession for 3 years from the date of possession and submit a report to the Commission whenever such hemp is grown, acquired, sold, distributed, dispensed, or separated from the Licensee in any way with a general description of the person or entity to whom it is acquired or divested.

### **9.03 Inspections**

All Hemp Program Plants, Hemp Program Plant materials, and hemp product which is being transported is subject to inspection with or without notice so long as it is present on the Tribal Lands. Failing to allow an inspection or interfering with an inspection is justifiable cause for immediate seizure of the plants, materials, or product.

## Cannabis Control Act

### **TITLE X. INSPECTIONS**

#### 10.01 Regular Inspections

The Commission must make regular and random inspections of each Licensee's operations in order to ensure compliance with this Act.

##### 10.01.01 Records Available

All Licensees must allow any Commission or United States inspector, auditor, or their representatives to have access to any location where Hemp Program Plants, Hemp Program Plant materials, or hemp products are located.

##### 10.01.02 Regular Inspections

At intervals deemed suitable by the Commission, but no less than once during each growing season for Hemp Cultivation Licensee's, and at least once per year for all other Licensee's, the Commission must inspect the premises and operations of each Licensee.

a) There is no requirement that the Licensee be informed of the time for regular inspection and random inspections will not be after notice.

b) A Licensee may not interfere or prevent an inspection and must allow the inspectors to observe operations, inspect the premises, review records, and perform any other act reasonably necessary to ensure compliance with this Act.

##### 10.01.03 Confidentiality

The Commission and the United States must protect the confidentiality of all information gathered from a Licensee which is proprietary to the Licensee, including, but not limited to, trade secrets and trade positions, confidential business information, financial condition, or business operations. The Commission and the United States may share the information with law enforcement authorities to the extent it is relevant to reporting or investigating an alleged crime.

### **TITLE XI. VIOLATIONS AND PENALTIES**

#### 11.01 Compliance

Any Licensee or Permittee who violates the condition of their license or permit is subject to sanction by the Cannabis Regulatory Commission. Sanctions will be imposed as set forth in this Section.

## Cannabis Control Act

### 11.02 Negligent Violations

Negligent violations include, but are not be limited to:

- a) Failure to provide a legal description of land on which the producer produces hemp;
- b) Failure to obtain a license, permit, or other required authorization from the Tribe; or
- c) Production of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the Acceptable Hemp THC Level. Hemp producers do not commit a negligent violation under this paragraph, if they make reasonable efforts to grow hemp and the cannabis does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

### 11.03 Corrective Action for Negligent Violations

Negligent violators will be subject to a corrective action plan which must include, at minimum, the following terms:

- a) A reasonable date by which the Licensee or Permittee will correct the negligent violation;
- b) A requirement that the Licensee or Permittee will periodically report to the Tribe on its compliance with this Plan for a period of not less than the next 2 years from the date of the negligent violation;
- c) A Licensee or Permittee that negligently violates this Plan may not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal, or local government;
- d) A Licensee or Permittee that negligently violates this Plan three times in a 5-year period is ineligible to obtain a hemp license or permit from the Tribe for a period of 5 years beginning on the date of the third violation;
- e) The Tribe will conduct inspections to determine whether the corrective action plan has been implemented as submitted; and
- f) A Licensee or Permittee that commits a negligent violation during a calendar year will be prohibited from participating in a hemp program for the remainder of the calendar year.

### 11.04 Culpable Violations

- a) If the Tribe determines that a Licensee or Permittee has violated this Plan with a culpable mental state greater than negligence, the Tribe will immediately report the producer to:

## Cannabis Control Act

- i) The U.S. Attorney General; and
- ii) The chief law enforcement officer of the Tribe.

b) Paragraphs 6.02 and 6.03 of this Title do not apply to culpable violations.

### 11.05 Felonies

a) A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in this Plan and producing hemp under this Plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

b) Any Licensee or Permittee growing hemp lawfully with a Tribal license, registration, permit, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before October 31, 2019 is exempted from paragraph a) of this section 6.05.

c) For Licensees or Permittees that are entities, each employee engaged in the cultivation, manufacture, distribution, transport, or importation of hemp is subject to these provisions.

### 11.06 Penalties and Sanctions

Upon learning that a Licensee or Permittee has violated this Act, an order of the Commission or a federal agent with authority to regulate the Licensee or Permittee, or a condition of their license, the Commission must immediately notify the Licensee or Permittee of the violation. If there is a likelihood that the result of the violation will cause serious bodily harm, injury to the environment or wildlife, or interference with the duties of the Commission or a federal agent, then the Commission may take immediate action to address the non-compliance, including termination of the license or permit. In all other cases, the Commission must notify the Licensee or Permittee of the violation and allow the Licensee a reasonable period of time to cure the violation to the satisfaction of the Commission.

The following penalties and sanctions will be imposed for the following violations and may be applied cumulatively:

#### a) Legal land description

A Licensee or Permittee who is required to provide an accurate legal land description as a condition of their license but fails to comply within the timeframe established by the Commission may not conduct activities authorized by the license or permit for the remainder of the term of the license or permit. Upon a second violation, the person is prohibited from participating in any activity regulated under this Act for a period of 3 years. Upon a third violation, the person is prohibited from participating in

## Cannabis Control Act

any activity regulated under this Act for a period of 5 years. A fourth violation will result in a permanent prohibition.

b) License required

Any person conducting activities which require a license or permit under this Act who fails to acquire the license or permit before conducting the activities is forbidden from conducting such activities for at least 3 years from the date of violation for the first offense, and permanently prohibited for the second offense.

c) Non-compliant cannabis

Any person who produces or possesses cannabis with a THC content that exceeds the Acceptable Hemp THC Level and does not remediate or dispose of the cannabis as set forth in this Act within the timeframe established by this Act, must immediately terminate all activities under the license or permit, turn over all hemp produced under a license to the Commission (Permittees must adhere to applicable state regulations), and refrain from similar operations for 3 years after the first violation, 5 years after a second violation, and permanently after a third violation. It is not a negligent violation under this section if the License or Permittee attempted to grow hemp and the hemp does not have a delta-9 tetrahydrocannabinol level of more than 1.0 percent on a dry weight basis.

d) False statements

Any person who materially falsifies any information contained in a license or permit application under this Act with a culpable mental state greater than negligence is permanently prohibited from obtaining a license or permit under this Act.

e) Other violations

Any person who fails to comply with this Act in any other respect or fails to comply with an order of the Commission within the timeframe established by the Commission is subject to penalty and sanction as determined by the Commission at the discretion of the Commission. Any person who violates the same provision of this Act 3 times within a 5 years period must, at a minimum, be prohibited from obtaining a subsequent license or permit under this Act for 5 consecutive years from the date of the third violation. A Licensee or Permittee that commits a negligent violation during a calendar year will be prohibited from participating in a hemp program for the remainder of the calendar year.

### 11.07 Crimes

A negligent violation of this Act is not a crime. All penalties and sanctions allowed under this Act are civil in nature.

## **Cannabis Control Act**

If the Commission believes that there is probable cause to believe that any person has violated a criminal law of the Tribe or the United States related to cannabis, the Commission must notify the law enforcement authority on the Reservation.

### **TITLE XII. APPEALS BY LICENSEES**

#### **12.01 Appeals by Licensees and Permittees**

Any person or entity who was aggrieved by an action of the Commission may appeal the action of the Commission as set forth in this Section. If the Tribe has adopted rules for appeals from Tribal commissions, then those rules may supersede these rules.

These provisions are intended to be read and interpreted consistently with the rules of the Court, and, if they differ in any way from the rules of the Court or render the rules of the Court impracticable, the rules of the Court will supersede these provisions.

#### **12.02 Remedy Available**

The only remedy available under this Act to a party who is aggrieved by the Commission is injunctive relief and no monetary damages may be awarded except for amounts wrongfully paid to the Commission. The prevailing party in litigation may be awarded attorney fees and costs associated with the litigation, but only if it is determined by the Court that the party who did not prevail in litigation acted in bad faith, raised claims or defenses that were known or should have been known to have no legal basis, or otherwise behaved in a manner during litigation that, at the discretion of the Court, caused unreasonable delay or interference. If attorney's fees and cost are awarded to the prevailing party, they must be in such amounts that they properly compensate the prevailing party for the level of harm to justice and fairness caused by the non-prevailing party's actions.

#### **12.03 Notice of Appeal**

Appeals must be filed with the Tribal Court within 30 calendar days of the decision or action by the Commission which is the subject of the appeal. Appeals are initiated by filing a Notice of Appeal with the Tribal Court and serving a copy of the Notice of Appeal on any Member of the Commission by personal service as set forth in the Tribe's rules for process.

The Notice of Appeal must contain the following information:

- a) Appellant's name, address, phone number, and other relevant contact information;
- b) The signature of the Appellant and the date of the signature;
- c) The action of the Commission that is being appealed and the date it occurred; and
- d) The reason the action is being appealed with enough detail to allow a response.

## Cannabis Control Act

### 12.04 Response

Within 20 days of receiving the Notice of Appeal, or within such greater time as approved by the Court for good cause the Commission may submit a Response, If a Response is not filed within the timeframe for responding, then the Appeal may be granted at the discretion of the Court.

The Response must contain information related to the act being appealed and must set forth any defenses that are known at the time.

### 12.05 Discovery

#### 12.05.01 By Appellant

Within 20 days of the filing of the Response, if any, or upon a greater period of time as approved by the Court for good cause, the Appellant must provide to the Commission the following information:

- a) A list of all lay witnesses who may be called at a hearing or a trial or who may have information relevant to Appellant's claim, including, if known, the general nature of the witness's likely testimony, the witness's age, address, phone number, and other contact information;
- b) A list of expert witnesses who may be called at a hearing or a trial, the nature of the testimony offered, the name, address, telephone number, and other contact information of the expert witness, and the expert witness's qualifications that qualify them an expert in the field in which they will testify;
- c) A list of all documents relevant to the Appellant's claim; and
- d) All other information that may be presented at trial.

#### 12.05.02 By Commission

Within 20 days of the Appellant's disclosure, if any, or within 40 days of the filing of the Response, whichever occurs first, or upon such greater period of time as approved by the Court for good cause the Commission must provide to the Appellant the following information:

- a) A list of all lay witnesses who may be called at trial or who may have information relevant to Appellant's claim, including, if known, the general nature of the witness's likely testimony, the witness's age, address, phone number, and other contact information;
- b) A list of expert witnesses who may be called at a hearing or a trial, the nature of the testimony offered, the name, address, telephone number, and other contact



## Cannabis Control Act

information of the expert witness, and the expert witness's qualifications that under them an expert in the field in which they will testify;

c) A list of all documents relevant to the Appellant's claim; and

d) All other information that may be presented at trial.

### 12.05.03 Ongoing Duty to Disclose

After initial disclosures, each party to the appeal has a duty to provide to the other party all information that it intends to present during trial. Upon request by either party the other party must provide reliable, accurate, and legible copies of documents that may be presented at trial or are otherwise relevant to the appeal and are not confidential.

Either party may request from the other any information it believes is in the possession of the other party.

### 12.05.04 Failure to Disclose

If a party fails to disclose a document, a witness, or other relevant information, they may not present the information at a hearing or a trial without the consent of the other party. The Court may also allow evidence to be presented over the objection of the non-disclosing party so long as good cause exists for the disclosing party's failure to disclose and presenting the evidence at the hearing or trial is not unfairly prejudicial to the objecting party.

### 12.05.05 Deadline for Disclosure

Unless the Court allows disclosure for good cause, no evidence may be presented at a hearing or trial that was not provided to the other party at least 10 days prior to the hearing or trial.

## 12.06 Rules of Procedure and Evidence

The Court must apply the applicable rules of procedure and evidence for the Court.

## 12.07 Appeals of Final Order

Either party may appeal a final decision of the Court using the appellate rules applicable for the Court.

## Cannabis Control Act

### TITLE XIII: COMPLAINTS BY THE COMMISSION

#### 13.01 Complaints

The Commission may collect funds due to the Commission when a Licensee or Permittee has not paid and may pursue injunctive relief against Licensees and Permittees who violate the terms and conditions of their licenses, permit, or a valid order of the Commission by filing a complaint or other acceptable form of pleading with the Court. The complaint must identify the defendant and state a claim with adequate specificity to put the defendant on notice of the nature of the claim and enable the preparation of a defense.

#### 13.02 Applicable Rules

The same rules regarding responsive pleadings, discovery, rules of evidence and procedure, and appeals of final orders apply to this Title as apply to Title XII.

#### 13.03 Denial for Lack of Due Process

No relief can be granted under this Title to the Commission, if the Court determines that the defendant was not provided adequate due process in the underlying enforcement action by the Commission, if the rules applicable to the Commission are unconstitutional, defective, or illegal under federal law, or if 30 days has not elapsed since the date the defendant was on effective notice of their failure to comply with an order or directive of the Commission.

### TITLE XIV. GENERAL RULES

#### 14.01 Computation of Time

All reference to days are calendar days, unless indicated otherwise.

If a deadline falls on a weekend or a holiday, then the applicable date is the following regular business day.

#### 14.02 Good Faith Immunity

No person acting in good faith pursuant to an authority granted to them under this Act may be held liable for any damage they may cause in carrying out the requirements of this Act. Persons aggrieved or harmed by a person properly acting under authority of this Act may seek compensation for damages caused to them from the Commission. The Commission may pay any claim made to them under this provision, but only so long as the person seeking compensation has obeyed all rules and orders related to the action resulting in the damage to them and the damage was necessary in order to carry out or implement an action that is necessary under this Act.

## **Cannabis Control Act**

### 14.03 Liberally Construed

These rules are to be liberally construed in order to meet the purpose of this Act.

**END.**