



SHIVWITS BAND OF PAIUTES HEMP PLAN

**SHIVWITS BAND HEMP PLAN
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CHAPTER 1. GENERAL PROVISIONS

Section 1-1. Short Title.

This document may be cited as the “Hemp Plan” or “Plan.”

Section 1-2. Findings and Purpose.

The Shivwits Band of Paiutes (“Shivwits” or “Band”) hereby finds and declares that:

- (a) The United States recognizes Indian tribes as unique nations with sovereignty over their members and territories.
- (b) Article VIII, Section 2 of the Paiute Indian Tribe of Utah Tribal Constitution authorizes the individual Bands to engage in business activities that promote the economic well-being of the Band and its members.
- (c) Hemp is a strain of cannabis that has grown naturally in North America. It predates the foundation of the United States of America and continues to grow in the wild.
- (d) Hemp was historically utilized for a variety of products and functions, including paper, cloth, and rope, but its uses have greatly expanded, in more recent times.
- (e) The cultivation of hemp was a staple of American agriculture until it was outlawed through state law, the Marijuana Tax Act in the 1930s, and the Controlled Substances Act of 1970, 21 U.S.C. § 801 *et seq.* (“Controlled Substances Act”), because hemp is derived from the same plant as marijuana.
- (f) Prior to the 2018 amendments to the Controlled Substances Act, contained in the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”), the Controlled Substances Act classified hemp as a Schedule 1 drug and prohibited any possession or use of hemp except in the course of federally approved research projects. The Controlled Substances Act also made it unlawful for any person to cultivate, manufacture, distribute, dispense, or possess (with intent to manufacture) hemp.
- (g) The Agriculture Improvement Act of 2018 also amended the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 *et seq.*) by adding Subtitle G entitled “Hemp Production,” which now allows the Band’s controlled cultivation of hemp in accordance with that Act, and a Tribal Plan approved by the Secretary of Agriculture.
- (h) The Band has decided to open specific lands within its jurisdiction to the cultivation, processing, and distribution of hemp by ratifying this Plan and submitting it to the United States Department of Agriculture for approval.

Section 1-3. Scope of the Tribal Plan.

- (a) This Plan shall govern the cultivation, processing, and distribution of hemp on lands within

the Band's Jurisdiction as required in Subsection G of the 2018 Farm Bill and will allow the Band to exercise its inherent sovereignty over its Band territory, exercise its inherent right to stimulate its economy, create jobs, develop and operate Band businesses, create an additional source of revenue for Band programs and operations and provide funding for its members and the community. The Shivwits Band of Paiutes may exercise jurisdiction and therefore primary regulatory authority over all production of hemp on its Reservation regardless of the extent of the Band's inherent regulatory authority.

(b) Band regulation of the possession, cultivation, processing, and distribution of hemp on lands within the Band's jurisdiction is necessary to protect the health, security, and general welfare of the Band community. In order to further these goals, the Band has adopted this Plan, which shall be liberally construed to fulfill the purposes for which it has been adopted.

(c) Nothing in this Plan shall be deemed to be in positive conflict with the Controlled Substances Act. In the event of a conflict between this Plan as approved by the Secretary of the USDA or his designee and the Band Hemp Ordinance, the terms of this Plan shall govern.

(d) The regulations and penalties imposed by this Plan extend to any person within the Band's Jurisdiction, whether licensed or not.

Section 1-4. Sovereign Immunity.

Nothing in this Plan shall be construed to limit the jurisdiction of the Band or the Band Court, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Band or its officers, instrumentalities, employees, elected officials, and agents or authorize any form a prospective waiver of such sovereign immunity.

Section 1-5. Exemption from Prosecution for Certain Acts.

No employee or Key Participant of a Hemp Business or Licensed Producer or Processor shall be subject to prosecution or civil penalty in the Band Court for the cultivation, production, or distribution of hemp when acting in accordance with this Plan and with applicable Band and federal law.

Section 1-6. Effective Date.

This Plan shall be effective upon the ratification by the Band Council and approval by the Secretary of the United States Department of Agriculture or his designee.

Section 1-7. Savings Clause.

In the event that any phrase, provision, part, paragraph, subsection, or section of this Plan is found by a court of competent jurisdiction to violate the Constitution or laws of the Band or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Plan. The entirety of the balance of this Plan shall remain in full and binding force and effect.

CHAPTER 2. DEFINITIONS

Section 2-1. Definitions.

Within this Plan, the following definitions apply:

- (a) “Act” means the Agricultural Marketing Act of 1946 as amended.
- (b) “Agricultural Marketing Service” or “AMS” refers to the Agricultural Marketing Service of the U.S. Department of Agriculture and is the agency the Secretary of Agriculture has charged with the responsibility to oversee the administration of this new Program.
- (c) “Band Court” means the courts of the Shivwits Band of the Paiutes as established pursuant to the Tribal Constitution, and the Band’s Law.
- (d) “Band” means the federally recognized Shivwits Band of the Paiutes of the Paiute Indian Tribe of Utah recognized as possessing powers of self-governance.
- (e) “Band Council” means the duly elected 5 five-member council of the Band, which is the governing body of the Band.
- (f) “Band’s Jurisdiction” means all lands held in trust for the Shivwits Band of Paiutes by the United States that are within the civil and criminal jurisdiction of the Band as that jurisdiction is defined in the Tribal Constitution, Shivwits Band Bylaws and by applicable federal law. The Shivwits Band’s jurisdiction includes primary regulatory authority over all production of hemp on the Shivwits Band’s Reservation regardless of the extent of the Band’s inherent regulatory authority. The Shivwits Band’s jurisdiction does not include land held in trust for other Paiute Bands or the Paiute Indian Tribe of Utah by the United States.
- (g) “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 been determined.
- (h) “CBD” means cannabidiol.
- (i) “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 Plan, a conviction is expunged when the conviction is removed from the individual’s criminal history report, 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. When an individual is allowed to withdraw an original plea of guilty or nolo contender 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.

- (j) “Criminal History Report” means the individual’s Federal Bureau of Investigation’s Identity History Summary.
- (k) “Culpable Mental State Greater Than Negligence” means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.
- (l) “DEA” means the United States Drug Enforcement Administration.
- (m) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9 Tetrahydrocannabinol. The decarboxylated value is also calculated using a conversion formula that sums delta-9 Tetrahydrocannabinol and eighty-seven and seven-tenths (87.7) percent of THC-acid.
- (n) “Delta-9 Tetrahydrocannabinol” or “THC” means delta-9- tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For purposes of this Plan, Delta-9 Tetrahydrocannabinol and THC are interchangeable.
- (o) “Directly related to” means immediate family relations as defined in Band law.
- (p) “Dry Weight Basis” means the ratio of the amount of moisture in a sample to the amount of dry solids in a sample. In the case of cannabis, a percentage of THC on a Dry Weight Basis means the percentage of THC by weight in a cannabis item (plant, extract, or other derivatives) after excluding moisture from the item.
- (q) “FSA” means the Farm Service Agency of the U.S. Department of Agriculture.
- (r) “Gas Chromatography” or “GC” means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.
- (s) “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.
- (t) “Financial Interest” means a person or entity that has more than a five (5) percent interest, share, or ownership in an operation(s).
- (u) “GPS” means Global Positioning System.
- (v) “Handle” means to harvest, or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. Handle also includes the processing of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- (w) “Handler” means a person or entity which handles hemp.

(x) “HCO” means the Band’s Hemp Control Officer, as established by this Plan. The term may include employees, agents, and designees of the HCO.

(y) “Hemp” means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of not more than 0.3 percent on a Dry Weight Basis.

(z) “Hemp Business” means a growing facility, cultivating facility, transportation company, processing facility, distribution facility, or any combination thereof.

(aa) “High-Performance Liquid Chromatography” or “HPLC.” A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

(bb) “Indian Country” means those lands which meet the definition contained in 18 U.S.C. § 1151.

(cc) “Hemp Products” means products derived from or made by processing hemp plants or plant parts.

(dd) “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.

(ee) “Key Participant” means a person or persons who have a direct or indirect financial interest in the hemp being cultivated or in the entity producing the hemp, such as an owner or partner in a partnership. A Key Participant also includes persons in a corporate entity with executive managerial control. Key Participant does not include non-executive managers such as farm, field, and shift managers.

(ff) “Law Enforcement Agency” means the agency or official designated by the Shivwits Band of the Paiutes to carry out law enforcement activities on the Shivwits Band Reservation, which presently includes Shivwits law enforcement officers as designated by the Shivwits Band Council resolution, and may include the Washington County Sheriff when deputized by the Shivwits Band Council, and may also include the Bureau of Indian Affairs, DEA, or any other federal law enforcement agency or drug suppression unit.

(gg) “License” means a valid license issued by the Band to grow, Handle, store, process, or market hemp.

(hh) “License Agreement” means an agreement between the Band and Licensed Grower, Producer, or Handler pursuant to which the Band regulates the conduct of that Licensee.

- (ii) “Licensed Grower” means a person or entity licensed by the HCO to grow, Handle, store, and market hemp under the terms established by this Plan.
- (jj) “Licensed Processor” means a person or entity Licensed by the HCO to Process, Handle, store, and market hemp under the terms established by this Plan.
- (kk) “Local Police” shall mean the police department of St. George, Utah, or any neighboring cities.
- (ll) “Location” or “Land” means the particular land, building, or buildings where hemp will be grown, handled, stored, or processed, which can include a field name or building name.
- (mm) “Location ID” means the unique identifier for each unique set of geospatial location coordinates where hemp will be grown, handled, stored, or Processed, which can include a legal description, field name, or building name.
- (nn) “Lot” means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area. The lot shall match the growing area reported by the Producer to the FSA for which the Lot number or numbers are received from the FSA.
- (oo) “Marijuana” means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.
- (pp) “Measurement of Uncertainty” means the parameter associated with the results of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement.
- (qq) “Negligence” means a failure to exercise the level of care that a reasonably prudent person would exercise in complying with this Plan.
- (rr) “Nonviable Seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (ss) “Ordinance” or “Band Ordinance” means any and all laws of the Band enacted to authorize, implement, or enforce this Plan.
- (tt) “Phytocannabinoid.” Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).
- (uu) “Pesticide” means any substance or mixture of substances intended to:
- (1) *Prevent, destroy, control, repel, attract, or mitigate any pest.*
 - (2) *Be used as a plant regulator, defoliant, or desiccant.*

- (3) *Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.*
- (4) *Any substance or mixture classified as a pesticide by the Band or any agent of the Federal Government.*

(vv) “Permit” means a Band issued certificate that authorizes a Licensed Producer to plant, grow, or store hemp, any part of hemp, or hemp-related products in a specifically described location.

(ww) “Produce” means to grow hemp plants for market, or for cultivation for market, in the United States.

(xx) “Producer” means an owner, operator, landlord, tenant, or sharecropper who shares the risk of cultivating a crop and who is entitled to share in the crop available for market or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

(yy) “Prohibited Variety” means a variety or strain of cannabis excluded by this Plan or regulations promulgated pursuant thereto.

(zz) “Process” means the harvesting of the cannabis plant or the use of any process or equipment, including, but not limited to, dehydrators or humidifiers that may be necessary to convert raw hemp plants or plant parts into a consumable product.

(aaa) “Processor” or “Processor Facility” means a commercial entity that purchases hemp from a grower and extracts resin from the hemp or creates a hemp-infused product for sale and transfer in packaged form.

(bbb) “Processor Licensing Agreement” means a document executed by a person or entity and the HCO authorizing the person or entity to process, handle, or store hemp at one (1) or more specified locations.

(ccc) “Program” means the HCO’s Hemp Program.

(ddd) “Propagule” means a plant or plant part that can be utilized to grow a new hemp plant.

(eee) “Publicly Marketable Hemp Product” means a hemp product that meets one (1) or more of the following descriptions:

- (1) The product does not include any living hemp plants, viable seeds, leaf materials, or floral materials that exceed the acceptable hemp THC level. Publicly marketable hemp product does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, Nonviable Seeds, seed oils, and plant extracts (excluding products that exceed the acceptable hemp THC level).
- (2) The product is CBD that was derived from hemp as defined by this Plan.

- (3) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.
- (fff) “Regulations” means the official regulations, policies, and procedures, if any, related to the implementation and enforcement of this Plan, adopted by Band Council. The regulations may also be referred to in this Plan as the “Band Hemp Regulations.”
- (ggg) “Territory of the Indian Tribe” or “Reservation” means (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (4) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by an Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.
- (hhh) “Total Acceptable Hemp THC Level” means when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The total acceptable hemp THC level for the purpose of compliance with the requirements of this hemp plan is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the total acceptable hemp THC level for the purpose of plan compliance. This definition of “Total Acceptable Hemp THC Level” affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of “marihuana,” 21 U.S.C. 802(16), in the CSA.
- (iii) “USDA” means the United States Department of Agriculture.
- (jjj) “Variety” or “Strain” means a subdivision of a species that is:
- (1) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
 - (2) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
 - (3) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other

publicly known varieties, or other characteristics from all other publicly known varieties.

- (kkk) “Volunteer Cannabis Plant” means any cannabis plant that grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop and is not intentionally planted.

CHAPTER 3. AUTHORIZATION AND REGULATION OF HEMP

Section 3-1. Exemption from Prosecution for Certain Acts.

No employee of a Licensed Producer or Licensed Processor shall be subject to prosecution or civil penalty in the Band Court for the cultivation, production, transportation, handling, or distribution of hemp in accordance with this Plan, applicable laws, and regulations of the Band, and applicable federal law.

Section 3-2. Hemp Regulations.

Band policies and procedures related to the regulation of hemp may further the purposes of this Plan. The Band Council, or its designee, shall approve all policies, procedures, and forms, including:

- (a) Licensing of applicants
- (b) Permitting locations where hemp is authorized
- (c) Reporting and recordkeeping
- (d) Agreements between growers and Processors
- (e) Procedures for sampling, which may THC testing, and post-testing actions
- (f) Pre-harvest and post-harvest retesting
- (g) Procedures for disposal of hemp
- (h) Pesticide use
- (i) Prohibited products or activities
- (j) Penalties
- (k) Remedies

CHAPTER 4. HEMP CONTROL OFFICER

Section 4-1. Position Establishment; Attributes.

The Band hereby establishes the HCO as an instrumentality of the Band. The HCO shall function as an arm of the Band and shall have the power and responsibility to enforce the provisions of this Plan, all Band Hemp-Related Ordinances, and the federal Hemp Regulations within the Band's Jurisdiction, which includes primary regulatory authority over all production of hemp on the Band's Reservation regardless of the extent of the Band's inherent regulatory authority. The HCO shall be under the supervision and direction of the Band Council.

Section 4-2. Duration.

The HCO shall exist until replaced or abolished by the Band Council.

Section 4-3. Qualifications.

(a) The HCO shall be one person appointed by the Band Council following a comprehensive background check and must:

- (1) not have any felony or drug-related misdemeanor convictions in the last ten years in any Tribal, state, or federal jurisdictions, and
- (2) not have a financial interest in any hemp operation.

(b) The following persons are ineligible to serve as HCO:

- (1) employees of any hemp operation,
- (2) Hemp contractors (including any principal of a management or other contracting company), or
- (3) persons directly related to or sharing a residence with any of the above.

(c) The Band may, in the future, authorize the HCO to hire support staff, which must meet the same qualifications detailed in (b) and (c) above.

Section 4-4. Removal.

The Band Council may remove the HCO for the following reasons: Conviction of a felony or any drug offense, neglect of duty, malfeasance in office, misfeasance, misconduct in office, any conduct that threatens the honesty or integrity of the position or otherwise violates the letter or intent of this Plan or other applicable Band or federal law, or for other good cause shown.

Section 4-5. Vacancies.

The Band Council shall appoint a new HCO when the position becomes vacant.

Section 4-6. Training, Equipment, and Staff.

The Band will provide or arrange for the HCO to have adequate training, equipment, staff, and compensation to fully carry out its duties.

Section 4-7. Powers and Duties.

The HCO shall have the power and responsibility to enforce the provisions of this Plan, all Band Hemp Related Ordinances and all applicable Band and federal Hemp Regulations. The HCO shall:

- (a) Issue licenses, permits, negotiating, and signing license agreements, and rescinding those agreements in a manner consistent with the provision of this Plan and applicable Band law.
- (b) Proposing Band Hemp Regulations and hemp-related amendments to Band law.
- (c) Ensuring the geospatial surveys of sites and approving permits for sites, locations, or lands within the Band's Jurisdiction.
- (d) Assessing and evaluating the potential environmental impacts of a Hemp Business' proposed operations.
- (e) Inspecting, examining, and monitoring all hemp imports (including the import of seeds, plants, and propagules), cultivation, handling, transportation, storage, and all other hemp-related operations and activities. This includes performing Band testing and inspections, including random inspections.
- (f) Ensuring, at minimum, annual inspections of a random sample of Producers to verify that hemp is not being produced in violation of this Plan.
- (g) Collecting, developing, maintaining, and filing all appropriate or required records related to hemp activities within the Band's jurisdiction and submitting all required reports to the Band Council, law enforcement, and the USDA.
- (h) Proposing one or more contracts with testing labs, background check companies, and other third-party contractors beneficial to the performance of the Band and/or necessary and appropriate to fulfill the requirements and intent of this Plan and remain compliant with applicable federal and Band law.
- (i) Ensuring compliance with all Band and Federal laws, rules, and regulations regarding hemp. This includes working cooperatively with USDA, the FSA, and federal and local law enforcement, developing and maintaining all required records and filing all required federal and Band reports, and cooperating fully with all federal inspections and audits of hemp activities within the Band's Jurisdiction.

- (j) Investigating any suspicion of wrongdoing associated with any hemp activities and reporting any potential criminal violations to USDA, the U.S. Attorney General, and applicable law enforcement.
- (k) Supervise the disposal of all hemp crops that are to be destroyed pursuant to the provisions of this Plan or federal law.
- (l) Complying with all federal and Band reporting, recordkeeping, and USDA audit requirements. Including developing and implementing a system to collect, maintain, and report to the Secretary of the USDA relevant, real-time information for each Producer licensed or authorized to produce hemp under this Plan.
- (m) Providing written notice of adverse decisions to applicants and Licensees.
- (n) Imposing and collecting necessary relevant fees and/or penalties.
- (o) Adopting departmental procedures to support the enforcement of this Plan and any related Band Ordinance or regulations.
- (p) Ensuring that the Band Hemp Office prepares for and cooperates fully with the USDA audit.
- (q) Supervising any HCO support staff and ensuring that they act in compliance with this Plan and all applicable federal and Band law.
- (r) Cooperating fully with all federal inspections and USDA auditors.

Section 4-8. Limitation of HCO Powers.

- (a) The HCO shall not regulate the Band or any Band entities except with respect to their activities involving the cultivation, processing, and distribution of hemp.
- (b) The HCO shall not regulate the use of any the surplus funds generated from the Band's cultivation, processing, and distribution of hemp once the net revenues have been distributed to the Band or to an entity of the Band utilizing those funds.
- (c) The HCO shall not require members of the Band Council to obtain an employee License.

Section 4-9. Compensation of the HCO.

The HCO shall be paid in the amount and manner determined by the Shivwits Band Corporation Board of Directors.

Section 4-10. Sovereign Immunity of HCO.

When acting under the color of his authority, the HCO shall enjoy all of the privileges and

immunities of the Band, except as specifically limited by this Plan, including sovereign immunity from suit in the state, federal, or Band Court.

(a) The HCO shall have no authority to waive the sovereign immunity of the Band or any other Band entity.

(b) Nothing in this Plan shall be deemed or construed to be a waiver of the HCO's sovereign immunity from suit.

(c) Notwithstanding any other provision herein, as an entity of the Band, the HCO's immunity from suit shall at all times be deemed waived for actions against the HCO initiated by the Band Council.

CHAPTER 5. LICENSING APPLICATIONS

Section 5-1. License Required to Grow, Handle, Store, or Process Hemp.

Any person or entity who wishes to produce, process, handle, or store hemp, and any Key Participant in that activity within the Band's jurisdiction, must possess a valid Band License to do so.

Section 5-2. Licenses to be Issued and Regulated by the Band.

The Band Council shall determine the appropriate number of hemp licenses in each category that will be issued each year. The Band or its designee shall adopt uniform licensing applications and a uniform process for approval or denial of licenses. These forms and processes shall be incorporated into the Band Hemp Regulations. The HCO retains the discretion to issue or deny licenses to any person or applicant in accordance with this Plan and the Band Hemp Regulations. Any person convicted of a felony related to a controlled substance under State or Federal or Band law before, on, or after the enactment of the 2018 Farm Bill shall not be eligible for any type of Band Hemp Licenses and is prohibited from producing hemp for 10- years following the date of 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.

Section 5-3. Licensing Entities.

Businesses that provide products or services related to the hemp industry may be organized under the Band Law and Order Code. All Key Participants of such business must still undergo a comprehensive background check.

Section 5-4. Waiting Period.

A person who has had a License terminated shall not be eligible to reapply to the HCO for a period of five (5) years from the date of termination.

Section 5-5. Background checks.

Applicants for a License and all of the Key Participants in their proposed activities must undergo a Criminal History Report as part of an application for licensing. The HCO or the Band Council may require such other background checks as it deems necessary or appropriate. When a person or entity applies for a license, Key Participants must each submit to those relevant background checks.

Section 5-6. Indian Trader Designation Required.

All business licenses, if not owned by the Band, are required to obtain an Indian Trader License as contemplated by the Code of Federal Regulations, Title 25 § 140.9, or by similar federal legislation as amended. If an Indian Trader License is not issued by the Bureau of Indian Affairs, a Band business license shall serve as its equivalent.

Section 5-7. Fees.

The Band Council shall set, and the HCO shall collect License application fees that are reasonable to the processing of License applications. Failure to pay the fees will result in the denial of an application.

Section 5-8. Application Contents.

(a) Applications shall include at a minimum:

- (1) The applicant's full name, residential address, telephone number, and email address, if an email address is available.
- (2) If the applicant represents a business entity, the full name of the business, the principal business location address, EIN number, the full name, title, and email address (if available) of each individual who will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report.
- (3) Documentation showing either a valid tenancy, ownership, or other legal interest in the proposed property, including whether the property is held in trust, fee, or allotted status and who its beneficial owners are.
- (4) Street address, location ID, legal description, and, to the extent practicable, the geospatial location coordinates for each field, greenhouse, building, or grow sites where hemp will be produced, handled, processed, or stored.
- (5) Information regarding any other hemp growing location or processing facility that is licensed in any other jurisdiction and a copy of the license(s).
- (6) A listing of all persons who have direct or indirect involvement in the hemp or hemp-related activities or who otherwise fall into the category of a Key Participant in the proposed activity.
- (7) Proof of Insurance that includes worker's compensation insurance for any

employees, and general liability insurance.

- (8) A business plan and operations plan that includes at a minimum the following, as applicable to the type of activity sought to be licensed:
- (i) The proposed acreage or greenhouse or indoor square footage to be Produced or used for processing.
 - (ii) The type of activity proposed for processing, the information required shall be of the same type the Band requires for licensing any type of business within the Band's jurisdiction. A description of the type of facility proposed and the anticipated or actual number of employees. The name of the proposed Manager of the Facility.
 - (iii) A security plan which shall include a general description of the security systems(s), fencing, and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements.
 - (iv) A list of Pesticides and other chemicals proposed for use.
 - (v) Description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including assurances that no odor will be detected from outside the location.
 - (vi) A plan for the disposal of hemp, chemicals, and related by-products.
 - (vii) A statement of previous farming experience.
 - (viii) Planned source of seeds or propagules.

Section 5-9. Application Processing.

- (a) The HCO shall review the application for completeness and compliance with this Plan and applicable Band law. In so doing, the HCO shall pay special attention to the background check materials presented, the applicant's relationship with the land, and whether the applicant has shown a willingness in the past to abide by Band and Federal law.
- (b) The HCO will then issue a conditional approval of the License application subject to the applicant meeting the requirements of this Plan and Band law, including the Band's Business License and Trespass Permit laws.
- (c) Any License Application that is missing required information shall be subject to denial.
- (d) Any person who materially falsifies any information contained in an application shall be ineligible to participate in hemp production under this Plan.

- (e) The HCO shall notify applicants by letter or email whether the application has been denied or conditionally approved. Upon conditional approval, the HCO shall assign each Licensee with a License or authorization identifier in a format prescribed by USDA.

CHAPTER 6. LICENSE AGREEMENTS

Section 6-1. License Agreement Required.

An applicant shall not be Licensed until the applicant is finally approved, and the applicant and the HCO have executed a Production or Processor/Handler License Agreement.

Section 6-2. Agreement Contents.

Any License Agreement shall contain at a minimum:

- (a) The Licensee's full name, residential address, telephone number, and email address, if an email address is available.
- (b) If the Licensee represents a business entity, the full name of the business, the principal business location address, the full name, title, and email address (if available) of each individual which will be a Key Participant in the venture for whom the entity is required to submit a Criminal History Report and agreement to advise the HCO when a Key Participant leaves or joins the Licensee.
- (c) The agreement shall contain the Licensee's consent to entry onto the Licensed grow site and to the inspection and sampling pursuant to this Plan of all premises where hemp or other cannabis plants or materials are located, or Licensed to be located, by the HCO, representatives of the HCO, law enforcement agencies, and USDA inspectors with or without cause, with or without advance notice.
- (d) The Licensee consents to forfeiture and disposal, without compensation, of:
- (1) Material found to have a measured Total THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis.
 - (2) Hemp, whether growing or not growing located in an area that is not permitted by the Band.
 - (3) Hemp, whether growing, not growing, or not accounted for in required reporting to the HCO.
- (e) The Licensee agrees to apply for a separate permit for each growing, processing, Handling, Production and storage location, which shall include a legal description of the location, Geospatial Location (to the extent practicable), the hemp seeds or propagules to be used, or the activities to be conducted at the location and receive approval for each of those permits prior to having hemp on those premises.

- (f) The Licensee acknowledges that all Licensed Producers or Processors/Handlers shall submit a Grow Site Modification Request Form and obtain prior written approval from a representative of the HCO before implementing any change to the Licensed grow sites or hemp varieties or strains stated in the License Agreement.
- (g) Acknowledgment by the Licensee that hemp shall not be grown, processed, handled, or stored in any location other than the location listed in the License Agreement or permit.
- (h) Agreement by the Licensee not to interplant hemp with any other crop without express written permission from the HCO.
- (i) Acknowledgment by the Licensee that anyone applying pesticides to hemp shall hold any required Pesticide License and apply Pesticides in accordance with Band or federal regulations.
- (j) Acknowledgment by the Licensee that the Licensee shall comply with restrictions established by the HCO limiting the movement, handling or processing of hemp plants and plant parts.
- (k) Acknowledge that the risk of financial or other loss shall be borne solely by the Licensed Producer and/or Processor.
- (l) Agreement that any time hemp produced on the Shivwits Band Reservation is in transit, a copy of the Producer and/or Processor Licensing Agreement from the Shivwits Band shall be available for inspection upon the request of a representative of the HCO or a Law Enforcement Agency. Post cultivation the hemp produced on the Shivwits Band Reservation that is being transported shall be accompanied by a copy of the report of the laboratory test results on such hemp being transported.
- (m) Agreement that, upon request from a representative of the HCO or a Law Enforcement Agency, a Licensed Producer and/or Processor shall immediately produce a copy of his or her License Agreement for inspection.
- (n) Agreement to submit Planting Reports, Harvest/Disposal Reports, and Production Reports, and any other reports required by the HCO, the FSA or the USDA, to which the Producer and/or Processor has agreed, on or before the deadlines established in this Plan.
- (o) Agreement to scout and monitor adjacent unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the HCO.
- (p) Agreement not to employ or to rent land to cultivate hemp from any person who had a Band Hemp License revoked or denied for one (1) or both of the following reasons:
- (1) Failure to obtain an acceptable Criminal History Report; or

- (2) Failure to comply with an order from a representative of the HCO.
- (q) Agreement to notify the HCO of any hemp-related interaction with law enforcement immediately by phone and to follow-up in writing within three (3) calendar days of the occurrence.
- (r) Agreement to notify the HCO of any theft of cannabis materials, whether growing or not.
- (s) Agreement to pay all fees imposed by the Band.
- (t) Failure to agree or comply with terms and conditions established in Producer licensing and/or Processor agreement shall constitute grounds for the withdraw of conditional approval, suspension or termination of the license, and HCO report to law enforcement or the USDA, or other appropriate HCO or Band Council action.
- (u) Failure to agree and sign the Producer licensing and/or Processor agreement shall terminate conditional approval, and a licensing agreement shall not be executed.
- (v) The signatures of the Band and Licensee(s).

Section 6-3. Operating Fees.

Licensees shall pay the Band and the HCO such fees and taxes as the Band may establish at the time and location as the Band Council shall mandate.

CHAPTER 7. PERMITS

Section 7-1. Location Permits Required.

A permit is required for each location or grow site that hemp is planted, grown, Handled, Processed, or stored.

Section 7-2. Location Permits to be Issued and Regulated by the Band.

The Band or its designee shall adopt a uniform location permitting application and approval or denial process of these permits. These forms and processes shall be incorporated into the Band's Hemp Regulations. The HCO retains the discretion to issue or deny permits in accordance with this Plan and any Band laws or regulations.

Section 7-3. Band License Required.

Permits may only be issued to individuals and entities with a Band Hemp License.

Section 7-4. Prohibited Locations.

Permits may not be issued for the following sites or locations:

- (a) Any place that is not listed in the Licensee's licensing agreement.

(b) On property that is not owned or completely controlled by the Licensee for the permit unless the HCO determines that the activity has been properly approved in compliance with Band and applicable federal law by the owner(s).

(c) On property owned by, leased from, or previously submitted in a License application by any person who is ineligible or was terminated, or denied a License.

Section 7-5. Co-Locating Permitted.

Permits may be issued to Licensed Producers and Licensed Processors to co-locate at the same location.

Section 7-6. Grow Site Modifications.

A Licensed Producer who elects to grow or process hemp in a new location or store or Handle hemp at a grow site other than the grow sites specified by the legal description and geospatial location listed in the Producer and/or Processor Licensing Agreement and permit shall submit a Site Modification Request Form, and obtain written approval from a representative of the HCO, prior to planting, processing or storing at the proposed location. HCO shall notify FSA of any site modifications.

Section 7-7. Grow Site Access.

No person shall have an expectation of privacy with respect to any location or grow site that is permitted under this Chapter. Licensees, whether present or not, shall allow representatives of the HCO and Band and/or federal law enforcement agencies to enter the premises with or without cause and with or without advanced notice.

Section 7-8. Fees.

The Band may collect fees approved by the Band Council that are reasonable to the processing of permit applications and grow site modifications. Non-payment of fees shall result in an application for a permit to be denied.

CHAPTER 8. REPORTING AND RECORDKEEPING

Section 8-1. Reporting Requirements of HCO.

At a minimum, the HCO must collect and maintain records and report on the following:

(a) All information required in this Plan, and all Band Ordinances and Regulations related to hemp, including all information related to the hemp producing and processing locations including the legal description and Location ID and geospatial coordinates for every site or location where the Band has approved hemp to be produced or processed.

(b) Information about approved growing, processing, handling, and storage site locations must

be reported to the Band, the DEA, and other law enforcement agencies whose representatives request registered site information.

(c) All applications for licensure, grants or denials of licenses, receipts of fees, distribution of fees, and revenues must be reported to the Band.

(d) A quarterly report to the Band Council summarizing the HCO's official actions, activities, investigative reports, license suspensions or revocations, findings of negligence or potentially criminal activities, and reports received from any Hemp Business.

(e) Any and all reports requested by the USDA.

Section 8-2. HCO to Submit Growing locations and Grower License Information to United States Secretary of Agriculture.

By the first of each month, and not more than thirty (30) days after receiving the following information, the HCO shall provide it to the United States Secretary of Agriculture or the Secretary's designee in a format that is compatible with USDA's Information Sharing System whenever possible. Note—if the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date:

(a) For each new Producer who is an individual and is licensed under this Plan, the report shall include the full name of the individual; license identifier; business address; telephone number; email address (if available); the legal description of the land on which the Licensee will produce hemp including, to the extent practicable, its geospatial location; and the scope of the activity authorized;

(b) For each new Producer that is an entity and is licensed under this Plan, the report shall include the full name of the entity; the principal business location address; EIN number; license or authorization identifier; the full name; title; and email address (if available) of each Key Participant of that entity; the legal description of the land on which the Licensee will Produce hemp including, to the extent practicable, its geospatial location; and the scope of the activity authorized;

(c) For each Producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information;

(d) The status and number of each Producer's license;

(e) The period covered by the report;

(f) An indication that there were no changes during the current reporting cycle, if applicable.

Section 8-3. HCO to Submit Hemp Disposal Report to the United States Department of Agriculture.

(a) Monthly Reports: By the first of each month, and not more than thirty (30) days after receipt, the HCO shall provide to the United States Secretary of Agriculture or the Secretary's

designee in a format that is compatible with USDA's Information Sharing System whenever possible a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials. This report shall include information regarding name and contact information for each Producer subject to disposal during the Producer's reporting period, and date disposal was completed. In addition, the report shall contain the information described in Section 11-1(c) (1)-(5) of this Plan. Note—If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date.

(b) Immediate Reports: In addition to the monthly report required in Section 8- 3(a) of this Plan, the HCO shall promptly notify the United State Secretary of Agriculture or the Secretary's designee by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in this Plan and attach the test results and records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken. Additionally, these test results shall be provided to the USDA directly from the testing lab.

Section 8-4. Planting Reports for Outdoor Plantings.

A licensed Producer shall submit to the HCO a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location. Each Field Planting Report shall identify the:

- (a) Correct variety of hemp planted.
- (b) Field location ID as listed in the license agreement.
- (c) Primary intended use of the harvest for each planting.

A Licensed Producer who does not plant hemp in an approved outdoor grow site listed in the Producer License Agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall not be planted at that grow site.

Section 8-5. Planting Reports for Indoor Plantings.

(a) A Licensed Producer shall submit to the HCO a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location. Each Greenhouse/Indoor Planting Report shall identify the:

- (1) Correct variety of hemp planted.
- (2) Greenhouse or indoor growing Location ID as listed in the License Agreement.
- (3) Primary intended use for the harvest of each planting.
- (4) In addition to the initial Greenhouse/Indoor Planting Report, a Licensed Producer with an approved greenhouse or indoor growing site shall submit quarterly growing reports for each location ID to the HCO, such Reports shall be due no later than

March 31, June 30, September 30, and December 31.

Section 8-6. Establishing records with USDA Farm Service Agency

(a) All Producers licensed to produce hemp under this Plan shall report their hemp crop acreage to the FSA and shall provide, at a minimum, the following information:

- (1) The street address and Location ID and, to the extent practicable, the Geospatial Location for each lot or greenhouse where hemp is permitted to be grown under this Plan and under the License and Location Permits issued by the HCO. If more than one location is permitted for an individual license holder, such information shall be provided for all production sites;
- (2) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp; and
- (3) License and permit identifier.

Section 8-7. Annual Report.

(a) The HCO shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this section:

- (1) Total planted acreage.
- (2) Total harvested acreage.
- (3) Total acreage disposed of.
- (4) Such other information as the USDA may request.

Section 8-8. Test Results Report.

The HCO must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from Licensees reports the test results for all samples tested to USDA. The test results report shall contain the information described in this section for each sample tested:

- (a) Licensee's license and permit number(s).
- (b) Name of Licensee.
- (c) Business address of Licensee.
- (d) Lot identification number for the sample.
- (e) Name and DEA registration number of the laboratory.

- (f) Date of test and report.
- (g) Identification of a retest.
- (h) Test result.

Section 8-9. Failure to Submit.

The Band Council shall take action against an HCO that fails to submit accurate and complete reporting as required under this Plan before the deadline.

CHAPTER 9. SEED OR PROPAGULE ACQUISITION

Section 9-1. Seed or Propagule Acquisition Within the United States.

- (a) A person shall not acquire seeds or propagules from a source within the United States without first submitting a complete Domestic Seed/Propagule Request form and obtaining written approval of the Domestic Seed/Propagule Request from a representative of the HCO.
- (b) The HCO shall not approve a Domestic Seed/Propagule Request unless:
 - (1) The Licensed Producer affirms in writing that the requested seed or Propagule acquisition plan shall not infringe on the intellectual property rights of any person, and
 - (2) The seed or Propagule has been certified by a state or seed or Propagule certification body to produce cannabis defined as hemp, which has a floral material THC content of not more than 0.3 percent on a Dry Weight Basis, or
 - (3) The seed has been shown to the satisfaction of the HCO to have Produced cannabis, which has a floral material THC content of not more than 0.3 percent on a Dry Weight Basis at another location in not less than two other grows.

Section 9-2. Seed or Propagule Acquisition from a Source Outside of the United States.

- (a) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the HCO.
- (b) A person shall not acquire propagules from outside the United States.
- (c) All Licensed Producers intending to plant the requested seed shall be listed on the request form.
- (d) The HCO shall not approve an International Seed Request form unless the Producer affirms in writing that the Producer's planned activities shall not infringe on the intellectual property rights of any person.

(e) A person submitting an International Seed Request form shall submit to the HCO documentation showing that mature plants grown from that seed Variety have a floral material THC content of not more than 0.3 percent on a Dry Weight Basis. Additionally:

(1) If the seed is imported from Canada the Producer must document that:

(i) The seed importation meets all USDA seed importation regulations and all other applicable federal law, and the seed is accompanied by either: a phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for hemp seeds grown in Canada.

(2) If the hemp seed is imported from a country other than Canada, it must be accompanied by

(i) A phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected, and

(ii) proof that the importation complies with all applicable USDA Animal and Plant Health Inspection Service (APHIS) regulations.

(f) A person acquiring seeds from a source outside the United States shall arrange for the seeds to arrive at the HCO's designated facility for inventory and distribution.

(g) Upon request from a representative of the HCO, a Licensed Producer shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the HCO's designated facility.

Section 9-3. Seeds of Wild, Landrace, or Unknown Origin.

(a) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the HCO.

(b) The HCO shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the HCO first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the HCO or its designee.

(c) Any Licensed Producer or Licensed Processor found to have saved seed, Propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the HCO shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her hemp as well as the wild seed and propagules including any cultivated cannabis or hemp from that variety.

CHAPTER 10. HARVESTING

Section 10-1. Producer Responsibilities.

Producers shall:

- (a) Allow the HCO to collect random samples of any cannabis material or investigate other grow related matters at any time prior to harvest. The Producer is obligated to cooperate fully with such sampling or investigation. The Producer or an authorized representative shall be present at the growing site for any sample collection. All samples become the property of the Band and are non-returnable.
- (b) Allow representatives of the HCO complete and unrestricted access to all hemp and other cannabis plants and seeds, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants and seeds, and all locations listed in the License Agreement.
- (c) Register and report his cultivation activities to the FSA and any other Band or federal agency that requires such registration and reporting
- (d) Comply fully with the pre-harvest sampling required in 10-2 below.
- (e) Harvested materials shall not be commingled with other plantings or harvests without prior written permission from the HCO. Harvested material should not be commingled until test results confirm material is not higher than acceptable THC level.
- (f) Floral materials harvested for *phytocannabinoid* extraction shall not be moved outside the Band's jurisdiction or beyond a Processor's permitted location, nor commingled, nor extracted, until the HCO releases the material in writing.

Section 10-2. Pre Harvest Sampling Required

- (a) A Producer shall not harvest any cannabis crop, including hemp, prior to pre-harvest samples being taken in the manner described herein and as outlined in Exhibit A, Sampling Protocol: Industrial Hemp Pre-Harvest Testing, which Sampling Protocol is incorporated herein by this reference as if fully set forth.
- (b) At least 30 days prior to the anticipated harvest of Band Licensed Hemp, a Band Licensed Producer shall contact the HCO to arrange for a Federal or Band Law Enforcement Agency or other Federal or Band person designated by the Band and properly trained pursuant to Band training procedures, to collect samples from the flower material from such cannabis plants for *Delta-9 Tetrahydrocannabinol* concentration level testing as described in this Plan. These sampling cuts shall then be collected within thirty (30) days of anticipated harvest of the crop. Contact information for trained sampling agents is available to Producers upon request.
- (c) The method used for sampling from the flower material of the cannabis plant must be

sufficient to determine, at a confidence level of 95 percent, that no more than one percent (1%) of the plants in the Licensed Lot would exceed the total acceptable hemp THC level under this Plan. The method used for sampling must ensure that a representative sample is collected and that it represents a homogeneous composition of the lot.

(d) During a scheduled sample collection, the Producer or an authorized representative shall be present at the collection site.

(e) All Licensed Growers and Producers must provide the representative(s) of the sampling agency with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants and seeds, as well as to all locations listed in the Producer's license and permit(s).

(f) A Band Licensed Producer shall not harvest their cannabis crop prior to these samples being taken and receipt of approval to harvest from the HCO. Violation of this requirement shall be grounds for license revocation.

Section 10-3. Pre-Harvesting Sampling Procedures.

Samples are taken to obtain specimens for the measurement of tetrahydrocannabinol (THC) content, which determines whether the specimens are hemp or marijuana. The measurements are intended to be representative of the THC content in a lot of hemp crop acreage, as identified by the Producer's Band License. Hemp producers may not harvest hemp prior to the hemp being sampled and receipt of permission to harvest from the HCO. Testing procedures are provided in Section 10-4 of this Plan. Sampling shall be completed in accordance with USDA Guidelines issued January 15, 2021.

Section 10-4 Testing

(a) The HCO, acting on behalf of the Band, shall contract with one or more DEA-registered testing laboratories which have the ability to utilize a reliable methodology for testing the THC level of hemp using post-decarboxylation or other similar methods where the THC concentration level reported accounts for the conversion of Delta-9 Tetrahydrocannabinolic acid (THC-A) into THC. The Shivwits Band of Paiutes may in the future develop its own testing facility for Hemp and Hemp Products, as the primary or sole testing authority, provided such facility meets the laboratory testing standards under State law or obtains DEA registration, at which time the HCO shall utilize the DEA-registered or State approved testing facility. At the request of a Producer, the Producer may select a DEA-registered laboratory to test its hemp provided its laboratory meets the same standards listed below.

(b) The lab's Hemp testing method must consider the potential conversion of delta 9 tetrahydrocannabinolic acid (THC-A) into THC and must measure the total available THC derived from the sum of the THC and THC-A. The total THC concentration level shall be determined and reported by the laboratory on a dry weight basis. Current testing methodologies meeting these requirements include those using Gas or High-Performance Liquid Chromatography with detection. At a minimum, the contracted or Tribal laboratory shall implement testing procedures

that determine total THC concentration on a dry weight basis to ensure that the THC level of the hemp does not exceed a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent. Such procedures shall be in accordance with the USDA's Hemp Testing Guidelines (Section 990.25), and may include: gas or liquid chromatography with detection or post decarboxylation. The testing laboratory shall report the results of testing to the HCO and Shivwits Band of Paiutes Band Council, and USDA as required by Section 990.70(d) of the USDA's Hemp Testing Guidelines.

(c) The lab's results must also be accompanied by a scientifically accurate, consistent and reliable Measurement of Uncertainty and the potential range of THC concentration which results from the application of those uncertainty factors

(d) Any lab selected by the Band shall meet the following additional standards:

- (1) Its quality assurance standards must ensure the validity and reliability of its test results. Its selection of its testing methods and its validation and verification must ensure that the testing methods used are appropriate (fit for the purpose) and that its laboratory can successfully perform the testing.
- (2) Its demonstration of testing validity must ensure consistent, accurate analytical performance.
- (3) Its method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this Plan.
- (4) It must use only appropriate, validated methods and procedures for all testing activities and measures of uncertainty.
- (5) Samples of hemp material from one lot shall not be comingled with hemp material from other lots during the sampling or testing process.
- (6) Preparation of samples shall require grinding of samples to ensure homogeneity of plant material.

(e) A test of a representative sample resulting in a higher than the total acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this Plan.

(f) The results of all sampling tests shall be returned by the lab to the Producer, the HCO the testing agent, and the USDA. The USDA Lab Report shall contain the items required by Section 8-8 of this Plan.

(g) A Licensed Producer, who believes that the original lab results were in error, may request a retesting of the original sample. Such retesting shall be arranged by the HCO as soon as possible and conducted in compliance with the same methods and standards this Plan made applicable to

the original sampling and test. Retesting shall be at the expense of the Licensed Producer and shall be performed in the same way and to the same standards as the original sampling and testing. However, at the request of the Producer, a different DEA-certified laboratory may be used. The results of the retesting shall be sent to the Producer, the HCO, and the testing agent.

(h) The HCO shall notify the Producer of the test results and authorize the harvest or order the disposal of the lot in compliance with the terms of this Plan. The HCO shall also notify law enforcement and notify the USDA by certified mail or electronically of any test results that do not meet the requirements of this Plan or applicable federal law.

(i) Lots with samples failing this test may not be Handled or entered into the stream of commerce.

(j) Lots with samples failing this test must be remediated or disposed of following the Remediation and Disposal Guidelines for Hemp Growing Facilities issued January 15, 2021, attached hereto as Exhibit B. The Band reserves the right to seek USDA and DEA approval for its own testing procedures in the future.

Section 10-5. Post-Testing Removal.

After the lot has been sampled for testing and the HCO approves harvest, the Producer may harvest the hemp for storage at a Licensed Location. The Producer shall not remove the hemp from a Licensed Location until the HCO receives the test results showing a total acceptable hemp THC level and releases the hemp. Under no circumstance may the hemp enter into the chain of commerce until tested and released by the HCO.

Section 10-6. Handling of Post-Harvest Samples.

All samples become the property of the Band and are non-returnable.

Section 10-7. Fees.

The Band may collect fees that are reasonably related to the costs of regulating Hemp harvests, including the cost of pre- and post-harvest sampling. Non-payment of fees after 30 days shall be considered a violation of the License Agreement.

CHAPTER 11. CROP DISPOSAL

Section 11-1. Licensees Required to Submit Crops Disposal Request and Crop Disposal Report.

(a) Mandatory disposal- A Producer whose hemp is tested and found to exceed the acceptable hemp THC level shall cooperate fully in the disposal of that hemp or hemp material by a person authorized under the Controlled Substance Act to Handle marijuana, such as a DEA-agent or a duly authorized Federal or Band or law enforcement officer. The manner of disposal shall be in accordance with the Controlled Substance Act and DEA regulations found at 21 CFR 1317.15.

(b) **Producer Requested Disposal-** A Producer who unilaterally determines that his hemp crop or hemp material must be destroyed under this Plan shall submit to the HCO a Crops Disposal Request at least 30 days prior to the proposed crop disposal. Upon receipt of this request, the HCO shall visit the grow site, determine the status of the grow, and either authorize the Producer's disposal of the crop in the presence of the HCO if the disposal will be more than 60 days from harvest or arrange for the crop or other hemp material to be collected for disposal by a person authorized under the Controlled Substance Act to Handle marijuana, such as a DEA-agent or a duly authorized Federal or Band law enforcement officer if it is less than 60 days from harvest.

(c) A Licensee whose crop is destroyed by a person authorized under the Controlled Substance Act to Handle marijuana, such as a DEA-agent or a duly authorized Federal or Band law enforcement officer and in accordance Controlled Substance Act and DEA regulations found at 21 CFR 1317.15, shall submit a Crop Disposal Report to the HCO. In the event that a Licensee fails to complete a disposal report, the HCO shall prepare it. This report shall contain at a minimum the following:

- (1) Name and address of the Licensee.
- (2) The license number of the Licensee.
- (3) Location information, such as Lot number, location type, and Geospatial Location or other location descriptor for the production area subject to disposal.
- (4) Information on the agent handling the disposal.
- (5) Total acreage.
- (6) The date of the proposed disposal.
- (7) Photos of the hemp lot.
- (8) Signature of the Licensee.

Section 11-2. Expense of Crop Disposal.

The Licensee shall be responsible for the cost of crop disposal.

Section 11-3. Penalty for Failing to Submit Crops Disposal Report.

Any Licensee that destroys hemp without the prior approval of the HCO or that fails to submit a disposal report shall have his/her license revoked, shall be banned from holding a Hemp License in the future, and shall be subject to a Band civil penalty of up to \$2,500 as well as possible federal enforcement.

CHAPTER 12. PROHIBITED ACTIVITIES

Section 12-1. Growing or Processing Prohibited Varieties of Hemp Prohibited.

No person may grow, cultivate, Handle, Process, broker, store, or market hemp or other cannabis that does not fall within the definition of a Publicly Marketable Hemp Product at any location within the Band's Jurisdiction.

Section 12-2. Restrictions on Sale or Transfer.

Licensees shall not cultivate, Handle, Process, broker, store, or market any cannabis that is not hemp.

Section 12-3. Operating Without a License Prohibited.

A person without a license from the Band shall not: cultivate, Handle, or Process; or broker, store, or market hemp or other cannabis.

Section 12-4. Intermingling Hemp with Other Crops.

Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the HCO.

Section 12-5. Operating Minimum.

A Licensed Producer shall not plant hemp in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the HCO.

Section 12-6. Restrictions on Sale or Transfer.

The following restrictions apply:

(a) No Licensee may sell, Handle, store, or transfer, or permit the sale, transfer, or storage of living plants, viable seeds, leaf material, or floral material to any person without prior approval by the HCO.

Section 12-7. Public Access to Hemp Restricted.

The public may not access hemp lots for activities such as a maze. Licensees shall not allow the unsupervised public on permitted growing, processing, handling, and storage sites.

CHAPTER 13. PENALTIES

Section 13-1. Applicability.

Anyone who violates this Plan or any Band Hemp Ordinance or regulation, whether intentionally or negligently, is subject to the penalties set forth within.

Section 13-2. Immediate License Suspension.

The HCO shall immediately suspend a license, without an opportunity for a hearing, if:

- (a) The Licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor.
- (b) The Licensed person or his or her agent admits to or has been found to have made any false statement to the HCO or its representative or failed to comply with any instruction or order from the HCO, a representative of the HCO, or any law enforcement officer on a hemp-related matter.

Section 13-3. License Suspension and Revocation.

The HCO shall notify a Licensee in writing that the Producer and/or Processor's Licensing Agreement has been temporarily suspended or revoked if a representative of the HCO receives information supporting an allegation that a Licensee has:

- (a) Violated the Regulations.
- (b) Made a false statement to the HCO or a Law Enforcement Agency.
- (c) Failed to comply with an order from a representative of the HCO or a Law Enforcement Agency.
- (d) The HCO shall notify the Band Council of any temporary suspension of any Producer or Processor's Licensing Agreement.

Section 13-4. Consequences of License Suspension.

A person whose License Agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the HCO issued its notice of temporary suspension, except as authorized in writing the HCO. As soon as possible after the notification of temporary suspension, the HCO shall inspect the licensed premises and perform an inventory of all cannabis hemp, and hemp products that are in the Licensee's possession.

Section 13-5. Corrective Action Plans for Negligent Violations.

- (a) As used in this Plan, negligent violations shall include, but not be limited to:
 - (1) Negligently failing to provide an accurate legal description of the land on which the Producer produces hemp;
 - (2) Negligently failing to obtain a license, license renewal, or other required authorization from the HCO; or
 - (3) The unintentional production or possession of *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent on a Dry Weight

Basis.

(b) Hemp Producers do not commit a negligent violation if they produce plants that exceed the total acceptable hemp THC level of 0.3 percent if they have used reasonable efforts to grow or possess hemp as defined in this Plan, and the plant does not have a THC concentration of more than 1.0 percent on a Dry Weight Basis.

(c) A Producer who negligently violates this Plan three times during a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(d) A person who is found by the HCO to have negligently Produced or possessed *Cannabis sativa L.* or any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a Delta-9 Tetrahydrocannabinol concentration of more than 0.3 percent on a Dry Weight Basis or who violated any statute or administrative regulation under this Plan shall be subject to a corrective action plan imposed by the HCO after consultation with the Licensee.

(e) Corrective action plans issued by the HCO shall include, at a minimum, the following information:

- (1) A reasonable date by which the Producer shall correct the negligent violation.
- (2) A requirement for periodic reports from the Licensee to the HCO about the person's compliance with the corrective action plan, statutes, and administrative regulations for a period of not less than two (2) years from the date of the negligent violation. A Producer that negligently violates this Plan or their License Agreement shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Band, or local government.
- (3) The HCO shall conduct such at least one inspection to determine if the corrective action plan has been implemented. Any Licensee who fails to cooperate in this follow up inspections or who knowingly or intentionally violates a corrective action plan shall have their license suspended.

Section 13-6. Culpable violations.

(a) **Mandatory Reporting.** If the HCO determines that a Producer or Processor has violated the Plan or any Band or federal statute or administrative regulation governing that person's participation in the Plan with a Culpable Mental State Greater Than Negligence, the HCO shall immediately report them to:

- (1) The U.S. Attorney General;
- (2) The chief law enforcement officer of the Band.

(b) Section 13-5 shall not apply to culpable violations.

Section 13-7. Felonies.

(a) A person with a State or Federal felony Conviction related to a controlled substance is subject to a 10-year ineligibility restriction on participating in processing 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) For Producers and Processors that are entities, Key Participants of all Licensees shall be considered to be participating in hemp production under this Plan and subject to the felony conviction restriction for purposes of paragraph (a) of this section.

Section 13-8. Termination of Licensing Agreement.

(a) A license is a privilege and not a right. The Band Council may unilaterally revoke licensing agreements upon the HCO's finding that a Licensed Producer and/or Processor has committed a violation of this Plan, any Band Hemp-Related Ordinance or Regulations, or violated any provision of an applicable licensing agreement. However, revocation of a license may not occur without the Licensed Producer or Processor first having due process.

(b) Due process prior to revocation shall include: (1) a written notice to the Licensed Producer or Processor of the alleged violation describing in detail the violation conduct and the provision of the Plan, Hemp-Related Ordinance or Regulations, or licensing agreement violated; (2) hearing before the Band Council, at least ten (10) days after the written notice, regarding revocation where the Licensed Producer or Processor can present evidence and testimony about the allegations and violation conduct; (3) a written decision from the Band Council within ten (10) days of the hearing, based on a preponderance of the evidence, containing findings of fact and conclusions of law regarding the revocation decision; and (4) opportunity to appeal the Band Council's decision to the Tribal Court within ten (10) days of the written decision.

Section 13-9. Termination of Employment.

Band employees, including employees of the HCO, may be terminated for violating provisions of this Plan or any Band Hemp-Related Ordinance or Regulations.

Section 13-10. Civil Penalties.

If the HCO receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Plan, any Band Hemp-Related Ordinance, or the Regulations, or their licensing agreement, then the HCO may assess a monetary civil penalty not to exceed \$2,500 per violation.

Section 13-11. Forfeiture.

Any hemp within the Band's jurisdiction is subject to forfeiture and disposal, without

compensation, if it is possessed without a license or at an unpermitted location, or if it is grown in a lot where the total acceptable hemp THC level is noncompliant.

Section 13-12. Stacking of Penalties Allowed.

If the HCO determines that an offense or offenses have been committed under this Plan, the HCO is permitted to stack various penalties.

Section 13-13. Advisement of Rights.

Any time the HCO issues a penalty under this Plan or a Band hemp licensing agreement, the Licensee shall be provided with written notice of their rights, including the right to a hearing.

CHAPTER 14. REMEDIES

Section 14-1. Burden of Proof.

Prior to issuing a penalty or an adverse decision, the HCO must base decisions on a preponderance of the evidence. In the case of the cultivation or possession of cannabis, which does not fall within the definition of hemp, the laboratory test showing the violation shall constitute a preponderance of evidence.

Section 14-2. Right to Review of Adverse Decisions.

Any person who has been issued an adverse decision under this Plan or the Band Hemp Regulations may seek the Band Council's review of such decision.

Section 14-3. Requesting a Review Hearing.

A hearing will not be conducted unless a written petition for review is provided to the Band Council within thirty (30) calendar days of service of the written notice of the HCO's adverse decision. The petition must state the bases that support the person's position. If no request is provided within the time allotted, the HCO's decision shall be deemed final.

Section 14-4. Review Hearing.

At the review hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, the Band Council may overturn the decision of the HCO, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Band and its members, or the Band Council may affirm the decision of the HCO. The decision of the Band Council shall be provided in writing. It shall be final and is not subject to judicial review. Hearings shall be open to the public.

Section 14-5. Legal Standard.

The legal standard for review shall be clear and convincing.

LEGISLATIVE HISTORY

This Plan was enacted by the Shivwits Band of the Paiutes Band Council on _____, by Resolution Number _____. This Plan was approved by the Secretary of the United States Department of Agriculture on_____.