

# **HEMP REGULATIONS**

of the

## **Torres Martinez Desert Cahuilla Indians**

Established and Adopted by The Tribal Council

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## INTRODUCTION

In the Agricultural Improvement Act of 2018 (“Farm Bill”), the federal government removed hemp from the list of controlled substances and directed the United States Department of Agriculture to make hemp growers eligible to participate in federal farm programs on an equal footing with other crops. The Farm Bill laid the groundwork for full-scale commercialization of hemp.

The Farm Bill also recognized that tribes, not the federal government, can and should assume primary regulatory authority over hemp production within their jurisdictions. To assume that regulatory authority, the tribe must submit a hemp plan to the USDA under which the tribe monitors and regulates the production of hemp within its jurisdiction. The hemp plan must contain:

- (1) A practice to maintain relevant information regarding land on which hemp is produced in the territory of the Indian tribe, including a legal description of the land, for a period of not less than three calendar years.
- (2) A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the territory of the Indian tribe.
- (3) A procedure for the effective disposal of plants, whether growing or not, that are produced in violation of the Farm Bill and products derived from those plants.
- (4) A procedure to comply with enforcement as set forth in the Farm Bill.
- (5) A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of the Farm Bill.
- (6) A procedure for submitting the information required by the Farm Bill, as applicable, to the USDA not more than 30 days after the date on which the information is received.
- (7) A certification that the Indian tribe has the resources and personnel to carry out the practices and procedures described above.

To satisfy these requirements for a plan to assume primary regulatory authority over the production of hemp throughout its territory regardless of the extent of its inherent regulatory authority, the Torres Martinez Desert Cahuilla Indians hereby adopts the following hemp regulations. The Tribe certifies that it has the resources and personnel to carry out the practices and procedures described herein.

## ARTICLE I

### Definitions

For purposes of these Regulations, the following terms have the following meanings:

(a) **“Acceptable hemp THC level”** means 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. The acceptable hemp THC level for the purpose of compliance with the requirements of the Tribe’s hemp plan is when the application of the measurement of uncertainty to the reported total 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 total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/-0.06%, the measured total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of “acceptable hemp THC level” is not meant to affect either the statutory definition of hemp in the 2018 Farm Bill (codified at 7 U.S.C. § 1639o(1)) or the definition of “marihuana” in the Controlled Substances Act (codified at 21 U.S.C. § 802(16)).

(b) **“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 total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

(c) **“Commission”** means the Torres Martinez Hemp Commission or other tribal agency, commission, or department as determined by the Tribal Council responsible for the oversight, implementation, and enforcement of these Hemp Regulations.

(d) **“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 these Regulations, 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 these Regulations.

(e) **“Corrective action plan”** means a plan established by the Tribe for a licensed hemp producer to correct a negligent violation or non-compliance with a hemp production plan and these Regulations.

(f) **“Cultivating or cultivation”** means planting, growing, producing, and harvesting a plant or crop for market.

- (g) **“DEA”** means the United States Drug Enforcement Administration.
- (h) **“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-A.
- (i) **“Decarboxylation”** means the removal or elimination of carboxyl group from a molecule or organic compound.
- (j) **“Delta-9 tetrahydrocannabinol or THC”** means the primary psychoactive component of cannabis. For these Regulations, delta-9-THC and THC are interchangeable.
- (k) **“Disposal”** means an activity that transitions non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green manure; burning plant material; and/or burying plant material into the earth and covering with soil.
- (l) **“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.
- (m) **“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.
- (n) **“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.
- (o) **“Handle or handling”** 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 or handling” also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.
- (p) **“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 total delta-9 THC concentration of not more than 0.3 percent on a dry weight basis. “Hemp” includes hemp products.
- (q) **“Key participants”** 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. This definition also does not include a member of the leadership of the Tribe's government who is acting in his or her capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

(r) **"Licensee"** means an individual or business entity possessing a license issued by the Commission to cultivate, handle, produce, or process hemp.

(s) **"Measurement of Uncertainty or 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.

(t) **"Negligence"** means the failure to exercise the level of care that a reasonably prudent person would exercise in complying with these Regulations.

(u) **"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(v) **"Phytocannabinoid"** means cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 THC and cannabidiol ("CBD").

(w) **"Plot or lot"** means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area. Each plot or lot may contain only one variety/strain of hemp.

(x) **"Postdecarboxylation"** means in the context of testing methodologies for THC concentration levels in hemp a value determined after the process of decarboxylation that determines the total potential delta-9 THC content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion:  $[Total\ THC = (0.877 \times THCA) + THC]$  which calculates the potential total THC in a given sample.

(y) **"Process or processing"** means converting an agricultural commodity into a marketable form.

(z) **"Produce or producing"** means to grow hemp plants for market, or for cultivation for market, in the United States.

(aa) **"Producer"** means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

(bb) **“Prohibited variety”** means a variety or strain of hemp excluded from the Reservation.

(cc) **“Remediation”** means the process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

(dd) **“Reverse distributor”** means a person who is registered with the DEA in accordance with 21 C.F.R. § 1317.15 to dispose of marijuana under the Controlled Substances Act.

(ee) **“Reservation”** means all land within the limits of the Torres Martinez Indian Reservation, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; all dependent Indian communities under the jurisdiction of the Tribe; all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same, subject to the jurisdiction of the Tribe; and any lands title to which is either held in trust by the United States for the benefit of the Tribe or an individual or held by the Tribe or an individual subject to restriction by the United States against alienation and over which the Tribe exercises jurisdiction. “Reservation” also means “Territory of the Tribe.”

(ff) **“Tribal Council”** means the Tribal Council of the Torres Martinez Desert Cahuilla Indians as set forth in its Constitution.

(gg) **“Tribe”** means the Torres Martinez Desert Cahuilla Indians, a federally recognized Indian tribe.

(hh) **“USDA”** means the United States Department of Agriculture.

(ii) **“Variety”** means a subdivision of a species that is uniform, in the sense that the variations in essential and distinctive characteristics are describable, 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 distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

## **ARTICLE II HEMP COMMISSION**

### **2.1 Creation**

There is hereby created the Torres Martinez Hemp Commission as a government agency of the Tribe responsible for the oversight, implementation, and enforcement of these Hemp Regulations. The Commission shall regulate hemp production and processing on the Reservation. The Commission is a regulator, not an operator. The Commission shall act with

honesty, integrity, and no conflict of interest.

## 2.2 Size and Term

(a) The Commission will consist of at least three (3) members to be appointed by the Tribal Council. This number may be increased or decreased at the discretion of the Tribal Council, but never be less than three (3) members.

(b) Each Commissioner will serve for a term of three (3) years unless earlier removed by the Tribal Council, but only for cause as determined by the Tribal Council. Commissioners can be reappointed to consecutive terms. There are no term limits. Upon resignation, removal, incapacity, or death during a term, the Tribal Council shall promptly fill the seat by appointment.

## 2.3 Qualifications

(a) All Commissioners must be at least 21 years of age and meet the qualifications set forth in Article X, section 2 of the Tribe's Constitution. In addition, all Commissioners must be licensed by the Commission.

(b) The following individuals cannot be Commissioners:

- (1) Sitting Tribal Council members.
- (2) Federal or state employees.
- (3) Key participants, partners, principals, members, shareholders, officers, directors, owners, agents, managers, volunteers, employees, or contractors of a licensee.
- (4) Any other person having significant influence over or a direct financial interest in an individual or entity producing or processing hemp on the Reservation.

## 2.4 Roles and Responsibilities

(a) The Commission will conduct oversight to ensure compliance with these Hemp Regulations and other applicable law. The Commission will serve as the licensing authority for licenses required hereunder.

(b) To carry out its regulatory duties, the Commission shall have unrestricted access to all areas of the Reservation where hemp is produced or processed.

(c) The Commission shall have authority to take enforcement actions, including suspension or revocation of any license, when appropriate. The Commission will have the functions, powers, and duties specified herein as well as those necessary or proper to enable it to oversee, implement, and enforce these Hemp Regulations.

(d) The Commission shall adopt and promulgate such rules, regulations, policies, procedures, fees, and fines necessary to oversee, implement, and enforce these Hemp Regulations.

## 2.5 Meetings

(a) The Commission shall meet at least once per quarter either in person, via electronic means, or both. The Commission can only act with a quorum present. A majority of the Commissioners shall constitute a quorum for the transaction of business except to adjourn a meeting.

(b) The Commission shall pass by-laws at its first meeting and select one of its members to act as Chairperson until otherwise decided by the Commission. Special meetings of the Commission may be called by the Chairperson as frequently as necessary for the proper oversight, implementation, and enforcement of these Hemp Regulations. Any member of the Tribe may attend any Commission meeting.

(c) Any member of the Commission who is present at a meeting, whether in person or via electronic means, at which action on any matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting.

(d) The Commission shall hold an annual meeting with the Tribal Council to summarize and report on its activities for the previous fiscal year.

(e) Any action required or permitted to be taken by the Commission may be taken without a meeting if all members of the Commission shall individually or collectively consent in writing to such action. Such action by written consent shall have the same force and effect as a unanimous vote by such Commissioners at a duly called meeting.

## 2.6 Compensation

Each member of the Commission may be compensated as determined by the Tribal Council; provided, however, the Tribe shall reimburse Commissioners for all expenses reasonably incurred in the performance of their duties as Commissioners.

## 2.7 Sovereign Immunity

As a government official, each member of the Commission shall be protected by the Tribe's sovereign immunity as well as any other immunities or defenses that may apply. The Commission cannot waive the Tribe's sovereign immunity. The Tribe will defend and indemnify any member of the Commission investigated or sued for official actions taken in good faith as a member of the Commission.



**ARTICLE III**  
**Testing and Sampling**

3.1 Annual Inspections

The Commission shall conduct annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of the Farm Bill or these Regulations.

3.2 Selecting Samples for Testing

(a) The total delta-9-THC content for hemp produced pursuant to these Regulations shall not exceed the acceptable hemp THC level. The Commission will test all hemp produced by any licensee for THC compliance. The Commission will inspect and sample 100% of all hemp lots to be harvested.

(b) The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95% that no more than 1% of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot. Samples of hemp plant material from one plot shall not be commingled with hemp plant material from other lots.

3.3 Collection of Samples

(a) The hemp to be selected for sampling shall be determined by a tribal inspector of the Commission. The Commission shall collect, handle, and retain samples from each plot in accordance with these Regulations. All samples become the property of the Tribe and are non-returnable. The material selected for sampling will be determined by the Commission, not the producer; the inspector, not the producer, may select which plants in a lot are to be selected for sampling. The inspector must be trained using USDA or tribal training procedures. The Commission must maintain information, available to producers, about trained inspectors for at least three years. A producer shall not harvest any hemp/cannabis prior to samples being taken.

(b) A producer shall report in writing to the Commission at least thirty (30) days before an expected harvest date a crop is about to be harvested. The Commission's receipt of a harvest notification triggers a site inspection and sample collection by an inspector. Samples must be collected within thirty (30) days prior to the anticipated harvest. A producer may not collect its own samples.

(c) An inspector shall contact the producer to confirm the field's location and schedule a time for inspection and sample collection prior to harvest. During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.

(d) Tribal inspectors shall be provided with complete and unrestricted access to all

hemp, and other cannabis plants, if any, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, producing, processing, or storage of hemp and other cannabis plants, if any, and all locations listed in the producer license.

(e) A separate sample must be taken from each non-contiguous plot of any given variety. A separate sample must be taken for each variety. Samples shall be secured in a paper bag (to allow for air-drying during transport).

(f) Cuttings will be collected to make one representative sample. Samples must be obtained from the flowering tops of plants when flowering tops are present and must be approximately five to eight inches in length from the "main stem" (that includes the leaves and flowers), "terminal bud" (that occurs at the end of a stem), or "central cola" (cut stem that could develop into a bud) of the flowering top of the plant. Depending on the acreage, the tribal inspector shall take cuttings from the number of plants suggested in Section 7 of the Sampling Guidelines for Hemp for the U.S. Domestic Hemp Production Program, issued January 15, 2021, within the plot and place the complete sample in a paper bag. The bag shall be sealed by folding over the top once and stapling the bag shut. The sample will be transported to the Commission for drying and storage.

(g) The tribal inspector shall label the sample container with a sample ID. The sample ID must include the last four numerical digits of the license number, date (MMDDYY), and a two-digit sequential sample number assigned by the inspector.

(h) The samples shall be transported to the Commission for storage in a secure area. The entire sample must then be sent to the testing lab for analysis.

(i) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from the Commission. Floral materials harvested for phytocannabinoid extraction shall not be moved beyond the on-farm processor, or commingled, or extracted, until the Commission releases the material.

(j) The licensee shall be notified within thirty (30) days of sampling of the status of the testing and eligibility of the harvested materials to leave the Reservation and/or move into market. Any producer may request additional testing at its cost if it is believed that the original total delta-9 THC concentration level test results were in error.

### 3.4 Testing Procedures

(a) Testing shall be completed by a DEA-registered testing lab not affiliated with any producer on the Reservation. Test results will be reported directly to the USDA and to the Commission, and then to the licensee by the Commission.

(b) The testing must be able to accurately identify whether the sample contains a total delta-9 THC content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of

THC-A in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this Section include gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported by a dry weight basis.

(c) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with these Regulations. Plots tested and not certified by the lab at or below the acceptable hemp THC level may not be further handled, processed, or enter the stream of commerce. The producer shall ensure the lot is disposed of or remediated in accordance with these Regulations and with the Controlled Substances Act and DEA regulations. Producers must notify USDA of their intent to dispose of or remediate non-conforming plants, or the Commission's disposal of or remediation of non-conforming plants and verify disposal by submitting required documentation.

(d) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

- (1) Laboratory quality assurance must ensure the validity and reliability of test results.
- (2) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing.
- (3) The demonstration of testing validity must ensure consistent, accurate analytical performance.
- (4) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of these Regulations.
- (5) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of these Regulations. The procedure must be in accordance with DEA reverse distributor regulations found at 21 C.F.R. § 1317.15, as amended, unless otherwise provided herein.
- (6) Sample preparation of pre- or post-harvest samples shall require grinding of the sample to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by USDA.

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

(f) The Commission shall promptly notify the USDA by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the

definition of hemp in these Regulations, provide the test results to USDA, and attach the records demonstrating the appropriate disposal or remediation of those plants and materials in the lot from which the representative samples were taken.

(g) Only laboratories registered with the DEA may conduct testing under these Regulations. All laboratories must comply with USDA reporting requirements. Laboratories shall only submit test results used to determine compliance with these Regulations. Test results from informal testing conducted throughout the growing season shall not be reported to USDA. The test results report submitted to USDA shall contain:

- (1) Producer's license or authorization identifier.
- (2) Name of producer.
- (3) Business address of producer.
- (4) Lot identification number for the sample.
- (5) Name of laboratory and the DEA registration number of laboratory for testing.
- (6) Date of test and report.
- (7) Identification of a pre-harvest or post-harvest retest.
- (8) Test result.

#### **ARTICLE IV** **Disposal and Remediation of Plants**

##### 4.1 Disposal or Remediation Based on Test Results

(a) In the event test results show a THC concentration greater than the acceptable hemp THC level, that harvest must be segregated from other harvested plots and remain segregated. Non-compliant hemp from the harvest of that lot must then be disposed or remediated.

(b) If a variety is designated as a prohibited variety, the Commission shall require the licensee to surrender without compensation the entire harvest and any unharvested crop, any live plants, and all germplasm of this variety to the Commission for disposal as provided herein.

(c) If the Commission reasonably believes the producer intended to grow hemp with a total delta-9 THC concentration in excess of the acceptable hemp THC level, the Commission may suspend or revoke a license, exclude the licensee from the Reservation, and report the matter to the USDA.

## 4.2 Disposal and Remediation in General

(a) The Commission may order the disposal or remediation, without compensation to licensee, of hemp found to have a THC concentration greater than the acceptable hemp THC level, of hemp located in an area that is not licensed by the Commission, or of hemp not properly accounted for in required reporting to the Commission or USDA.

(b) The disposal or remediation must be conducted either by using a DEA-registered reverse distributor or law enforcement, or on site at the farm or hemp production facility. So long as in compliance with the Controlled Substances Act and DEA regulations, hemp may be destroyed by plowing under, mulching, composting, disking, bush mowing, deep burial, and burning where it is made non-retrievable or non-ingestible. The Commission shall verify the disposal or remediation in person.

(c) Producers must notify USDA and the Commission of their intent to dispose of or remediate non-conforming plants and verify disposal or remediation by submitting required documentation. If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels. It is the responsibility of the producer to pay any fees associated with resampling, remediation, and/or disposal. Any non-compliant hemp parts or biomass that are non-compliant with the acceptable hemp THC level after remediation shall be destroyed. Producers may use the Remediation and Disposal Guidelines for Hemp Growing Facilities for the U.S. Domestic Hemp Production Program, issued January 15, 2021, as guidance in the disposal or remediation of non-conforming plants.

## 4.3 Reporting

(a) The Commission shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal or remediation record of those plants and materials. This report would include information regarding name and contact information for each producer subject to a disposal or remediation during the reporting period, and date disposal or remediation 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.

(b) The report shall contain the following information:

- (1) Name and address of the producer.
- (2) Producer license or authorization identifier.
- (3) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation.
- (4) Disposal or remediation completion date.

- (5) Total acreage.

**ARTICLE V**  
**Licensing**

5.1 Application

(a) Any person producing or intending to produce hemp on the Reservation must have a valid license prior to producing, cultivating, handling, processing, or storing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked. Any person who does not hold a valid license from the Commission shall not produce, cultivate, handle, process, or store hemp on the Reservation.

(b) Any person who wishes to engage in the cultivating, handling, or processing of hemp on the Reservation, including employees and contractors, shall submit to the Tribe annually a complete license application. An applicant must be at least 18 years of age.

(c) Applicants must submit a complete application to the Commission before the application will be accepted or considered. All applications must be complete in every material detail. All applications must include all attachments or supplemental information required by the current forms supplied by the Commission. The application and attached materials will become the property of the Commission. A license must be renewed annually.

(d) The Commission may impose a fee to cover the costs of licensing and regulation. If imposed, all applications must be accompanied by a full remittance for the whole amount of the fee. The Commission may refuse to accept an incomplete application or an application without the required fee.

(e) An applicant shall submit, at a minimum, his or her full name, mailing address, telephone number, and email address. If the applicant represents a business entity, the applicant shall submit the full name of the business, the jurisdiction of formation, the principal business address, the full names of key participants, their titles and email addresses, and the employer identification number ("EIN") of the business. The applicant must also submit the legal description of the area where hemp will be cultivated, handled, produced, or processed. Any application that is missing required information may be denied.

(f) All applicants for initial licensure shall provide a photograph and be fingerprinted for a fingerprint-based criminal history record check. A renewal applicant must provide a photograph and be fingerprinted if requested by the Commission. Any applicant may be required to establish his or her identity and age by official documents. Applicants may be required to sign an authorization to release information as prescribed by the Commission. All applicants shall undergo and pay for an annual criminal background check. A temporary license may be issued pending completion of the criminal background check. Licenses are not automatically renewed.

(g) A license modification is required if there is any change to the information submitted in the application including, but not limited to, sale of a business, the production,

handling, or storage of hemp in a new location, or a change in the key participants producing under a license.

(h) The Commission reserves the right to deny a license for any reason.

## 5.2 Badges

(a) The Commission shall assign each producer with a license or authorization identifier in a format prescribed by USDA. Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated, or encumbered.

(b) All licensed persons will receive a badge. The badge may be the license. The Commission shall acquire a machine for making picture identification badges that will include license numbers. All persons in a hemp production area shall display on his or her chest a license identification badge or a visitor badge at all times. A licensee shall not alter, obscure, damage, or deface the badge in any manner. All badges will remain the property of the Commission and may be suspended or revoked for violation of these Regulations or other applicable law.

## 5.3 False Statements

(a) All applicants shall submit information to the Commission in a full, faithful, truthful, and fair manner. The Commission must deny an application where the applicant made intentional or purposeful misstatements, omissions, misrepresentations, or untruths in the application or in connection with the applicant's background investigation. This type of conduct may be considered as the basis for additional administrative action against the applicant and it may also be the basis for criminal charges against the applicant.

(b) An applicant shall not have and shall not make any false statements or representations to an inspector of the Commission or a law enforcement agency.

## 5.4 Hemp Production and Record Keeping

(a) The Commission shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under these Regulations. 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. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the following information:

- (1) For each new producer who is an individual and is licensed or authorized under these Regulations, the report shall include the full name of the individual, license or authorization identifier, EIN of the business entity, business address, telephone number, and email address (if available).
- (2) For each new producer that is an entity and is licensed or authorized under these Regulations, the report shall include full name of the entity,

the principal business location address, license, or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history report.

- (3) 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.
- (4) The status of each producer's license or authorization.
- (5) The period covered by the report.

(b) The Commission shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the following information:

- (1) Total planted acreage.
- (2) Total harvested acreage.
- (3) Total acreage disposed and remediated.

(c) Producers shall maintain records of all hemp plants acquired, produced, handled, or disposed of as will substantiate any required reports. All records and reports shall be maintained for at least three years.

(d) All records shall be made available for inspection by the Commission's inspectors, auditors, or their representatives during reasonable business hours. The following records must be made available:

- (1) Records regarding acquisition of hemp plants.
- (2) Records regarding production and handling of hemp plants.
- (3) Records regarding storage of hemp plants.
- (4) Records regarding disposal or remediation of all cannabis plants that do not meet the definition of hemp.

(e) All reports and records required to be submitted to the Commission or USDA pursuant hereto which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of the Commission or USDA or their representatives. Confidential data or business information may be shared with applicable federal, state, tribal, or local law enforcement or their designee in compliance with the Agricultural Marketing Act of 1946, as amended.



(f) The Commission may limit the size, location, capacity, and hours of operation of hemp production or processing areas depending on adverse impacts on the Tribe, environment, and surrounding area. Authorized representatives of the Commission and law enforcement may enter hemp production or processing areas at any time for any reason to inspect said areas.

(g) Hemp shall not be cultivated, handled, produced, or processed in or adjacent to any structure that is used for residential purposes or within 1,000 feet of a school, church, or public recreation area.

#### 5.5 License Suspension

(a) The Commission may issue a notice of suspension to a producer if the Commission or its inspector receives some credible evidence establishing that a producer has engaged in conduct violating a provision of these Regulations or failed to comply with a written order from the Commission related to negligence as defined herein.

(b) Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when the Commission issued its notice of suspension, without prior written authorization from the Commission.

(c) Any person whose license has been suspended shall not produce hemp during the period of suspension. A producer whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

#### 5.6 License Revocation

The Commission shall immediately revoke the license of a hemp producer if such producer pleads guilty to, or is convicted of, any felony related to a controlled substance, made any materially false statement with regard to these Regulations to the Commission or its inspector with a culpable mental state greater than negligence, is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence, or negligently violated these Regulations three times in five years.

### **ARTICLE VI** **Enforcement Procedures**

#### 6.1 Negligent Violation

(a) A hemp producer on the Reservation shall be subject to a corrective action plan if the hemp producer negligently fails to provide a legal description of land on which hemp is cultivated, handled, or processed, negligently fails to obtain a license or other required authorization to produce hemp, or negligently produces hemp with a THC concentration greater than the acceptable hemp THC level. Producers shall not receive more than one negligent violation per growing season.

(b) A hemp producer subject to a corrective action plan shall comply with such plan to correct the negligent violation and the plan shall include, at a minimum, (1) a reasonable date by which the hemp producer shall correct the negligent violation, (2) steps to correct each negligent violation, and (3) a requirement that the hemp producer shall periodically report to the Commission on compliance of the hemp producer with tribal law related to hemp for a period of not less than the next two calendar years from the date of the negligent violation. The Commission shall conduct an inspection to determine if the corrective action plan has been implemented as submitted. If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(c) A hemp producer that negligently violates tribal law related to hemp shall not as a result of that violation be subject to any criminal enforcement action. A hemp producer that negligently violates tribal law related to hemp three times in a five-year period shall be ineligible to cultivate, handle, produce, or process hemp on the Reservation for a period of five years beginning on the date of the third violation.

## 6.2 Other Violations

If the Commission determines that a hemp producer has violated tribal law related to hemp with a culpable mental state greater than negligence, the Commission shall immediately report the producer to the U.S. Attorney General and the chief law enforcement officer of the Tribe, as applicable.

## 6.3 Felony Conviction

A person with a felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp hereunder 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. For producers that are entities, key participants of the producer will be subject to the felony conviction restriction for purposes of these Regulations.

## 6.4 False Statement

Any person who materially falsifies any information contained in an application to produce hemp on the Reservation shall be ineligible to produce hemp on the Reservation.

## 6.5 Site Access and Reporting

(a) The Commission shall provide information about licensed cultivating, handling, producing, and processing site locations to representatives of federal law enforcement as requested. The Commission shall also comply with the reporting requirements set forth in 7 C.F.R. § 990.70.

(b) Licensed producers shall have no reasonable expectation of privacy with respect

to buildings or sites where hemp is located. A licensed producer, whether present or not, shall permit an inspector of the Commission or a law enforcement agency to enter premises where hemp is located with or without cause and with or without advanced notice.

(c) The Commission shall submit to the USDA not more than 30 days after the date on which the information is received contact information for each hemp producer including name, telephone number, email address, mailing address, a legal description for each plot, field, facility, or other place where hemp is licensed to be cultivated, handled, produced, or processed, and for each hemp producer the status of his, her, or its license and any changes in that status. The Commission shall update the information to the USDA as appropriate.

(d) All hemp must be cultivated, handled, produced, and processed in a secure area located on the Reservation. The secure area must be enclosed with a fence and may only be accessed by licensed persons, authorized visitors, emergency personnel, and law enforcement. Signs should be posted throughout the area that read: "THIS IS HEMP (not marijuana)" or words to that effect. Other signs should be posted that read: "DO NOT ENTER" or words to that effect. All areas of ingress and egress to the enclosed area shall be locked. Failure to comply with the following may be grounds for license suspension, revocation, or denial.

(e) All areas where hemp is cultivated, handled, produced, or processed must be kept in a clean, orderly, and sanitary condition. Litter and waste must be properly stored and removed.

(f) No person shall disclose confidential information, which is information not generally known to the public, unless required to do so by applicable law. Licensees shall not obtain or utilize confidential information the licensee is not lawfully entitled to acquire or possess.

(g) All producers licensed to produce hemp on the Reservation shall report hemp crop acreage with the USDA Farm Service Agency and shall provide, at minimum, the following information:

- (1) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If a producer operates in more than one location, that 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.
- (3) License or authorization identifier.

(h) All producers licensed to produce hemp on the Reservation shall also report to the Commission total acreage of hemp planted, harvested, and, if applicable, disposed. The Commission shall collect this information and report it to the USDA Agricultural Marketing Service.

## 6.6 Auditing

(a) Producers may be audited by the Commission. The audit may include a review of records and documentation, and may include site visits to farms, fields, greenhouses, storage facilities, or other locations affiliated with the producer's hemp operation. The inspection may include the current crop year, as well as any previous crop year(s). The audit may be performed remotely or in person.

(b) Audit verifications may be performed once every three years unless otherwise determined by the Commission. If the results of the audit find negligent violations, a corrective action plan may be established.

(c) The producer's operational procedures, documentation, and recordkeeping, and other practices, may be verified during the onsite audit verification. The auditor may also visit the production, cultivation, or storage areas for hemp listed on the producer's license.

(d) The auditor shall assess whether required reports, records, and documentation are properly maintained for accuracy and completeness.

(e) Audit reports will be issued to the licensee within sixty (60) days after the audit is concluded. If the Commission determines under an audit that the producer is not compliant, the Commission shall require a corrective action plan. The producer's implementation of a corrective action plan may be reviewed by the Commission during a future site visit or audit.

## **ARTICLE VII** **Pesticides**

### 7.1 Pesticide Use

(a) A licensee may only use pesticides and other agricultural chemicals in accordance with applicable laws, statutes, rules, and regulations, including permitted use for food crops. Nutrients used in the cultivation of hemp must be appropriate for use in food production.

(b) No licensee may detach, alter, deface, or destroy, in whole or in part, any label on any Pesticide. A licensee must have the original label or a copy thereof for all pesticides and other agricultural chemicals used during its cultivation process.

### 7.2 Pesticide Records

(a) A licensee must establish written standard operating procedures for the cultivation of hemp. The standard operating procedures must at least include when, and the manner in which, all pesticides and other agricultural chemicals are to be applied during its cultivation process. The licensee must follow the manufacturer's application and storage recommendations, and disposal recommendations for the pesticide product, and must follow EPA Worker Protection Standards when preparing and applying pesticides.

(b) A licensee that applies any pesticide or other agricultural chemical to any portion of a hemp plant, water, or feed used during cultivation must document and maintain a record of the following information:

- (1) The name, signature and license number of the individual who applied the pesticide or other agricultural chemical.
- (2) The date and time of the application.
- (3) The EPA registration number of the pesticide or CAS number of any other agricultural chemical(s) applied.
- (4) Any of the active ingredients of the pesticide or other agricultural chemical(s) applied.
- (5) Brand name and product name of the pesticide or other agricultural chemical(s) applied.
- (6) The restricted entry interval from the product label of any pesticide or other agricultural chemical(s) applied.
- (7) A description of the hemp plants that the pesticide or other agricultural chemical(s) was applied to.
- (8) The total amount of each pesticide or other agricultural chemical applied.

## **ARTICLE VIII** **Additional Provisions**

### 8.1 Jurisdiction

(a) Tribal regulation of hemp on the Reservation is necessary to protect the health, security, and general welfare of the Tribe and its members. To further these goals, the Tribe has adopted these Regulations which shall be liberally construed to fulfill the purposes for which they have been adopted. Any ambiguity should be construed in favor of the Tribe.

(b) The regulations and penalties imposed by these Regulations extend to any person within the Tribe's jurisdiction, whether a licensee or not.

(c) Nothing in these Regulations shall be construed to limit the jurisdiction of the Tribe, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, officials, instrumentalities, employees, or agents, or authorize any form of prospective waiver of such sovereign immunity.

8.2 Miscellaneous

(a) In the event that any phrase, provision, part, paragraph, subsection, or section of these Regulations is found by a court of competent jurisdiction to violate the laws of the Tribe or any applicable federal law, such phrase, provision, part, paragraph, subsection, or section shall be deleted from these Regulations. The entirety of the balance of these Regulations shall remain in full and force and effect.

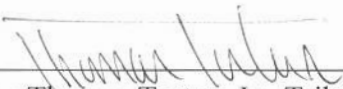
(b) The venue for any legal action related hereto shall be in the Tribal Court.

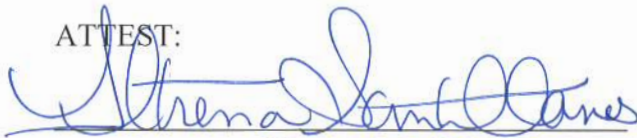
(c) These Regulations may be amended by the Tribal Council and any such amendment will become effective upon approval by the USDA.

**CERTIFICATION**

We, the duly elected Tribal Chair and Tribal Secretary of the Torres Martinez Desert Cahuilla Indians, hereby certify that the <sup>General</sup> Tribal Council approved and adopted these Amended Hemp Regulations at a regularly scheduled meeting held on January 14, 2023 with a quorum present by a vote of 32 for, 0 against, and 4 abstaining.

**TORRES MARTINEZ DESERT CAHUILLA INDIANS**

  
By: Thomas Tortez, Jr., Tribal Chairman

ATTEST:  
  
By: Altrena Santillanes, Tribal Secretary