



# U.S. Domestic Hemp Production Program

# Topics Covered



- Brief overview of 2014 & 2018 Farm Bill hemp provisions
- Brief overview of IFR
- Differences between the IFR and Final Rule
  - What changed &
  - What stayed the same
- FSA Reporting
- Lab Requirements
- Sampling Agents
- USDA Producer Reporting

# 2014 Farm Bill

## (February 7, 2014)



- Allowed pilot program to study hemp production in United States.
- State Depts. of Ag & institutions of higher education could create pilot programs for research purposes to study the growth, cultivation, or marketing of industrial hemp.
- THC concentration of  $\leq 0.3\%$  on a dry weight basis.
- Did not remove industrial hemp from the Controlled Substances Act.
- More than 40 states created pilot programs.

# 2018 Farm Bill

## (December 20, 2018)



- Hemp graduated from pilot program into full legalization.
- De-coupled hemp from marijuana; hemp **not** a Schedule I drug nor subject to the Controlled Substances Act.
- Mandated USDA develop a program to review and approve hemp plans submitted by States and Indian tribes, **and** to establish a Federal plan for areas that do not have a USDA-approved plan.

# Interim Final Rule (IFR) (October 31, 2019)



- Established the U.S. Domestic Hemp Production Program.
- Provided the first regulatory requirements governing hemp production including: licensing, THC limits, violations, sampling, testing, reporting, oversight.
- Provided regulatory requirements for State, Tribal, and the USDA hemp production programs.

## Public Comment & Outreach



- Held two public comment periods.
  - One directly after the IFR was published & one in Fall 2020.
  - Approximately 5,900 comments received from stakeholders.
- Received input from State Depts. of Ag, industry groups, hemp farmers, and many others.
- Held a listening sessions for Indian tribes and other industry groups.
- Attended numerous meetings and conferences to listen to feedback.
- Made several key changes to the FR based on comments, stakeholder engagement, and feedback.

# Final Rule Updates



## 30-day Harvest Window

- The FR extended the sampling window from 15 days to 30 days before harvest.
- Many stakeholders felt the 15-day window was too burdensome.
  - Staffing issues at harvest time
  - Resource strain
  - Lab testing difficulties
  - Differences between large states v small states

# Final Rule Updates



## 1.0% Negligent Violation

- Farmers can receive a negligent violation for failing to monitor THC concentration levels.
- The FR increased the negligent violation from 0.5% THC to 1.0% THC.
- Many stakeholders said that the 0.5% requirement was too low.
- Hemp over 0.3% THC still may not enter the stream of commerce and must be destroyed or remediated. However, producers will not receive a negligent violation for a hemp crop under 1.0% THC.



# Final Rule Updates



## New Remediation Options for “Hot” Crops

- The IFR required **all** “hot” crops be destroyed.
- The FR provides methods to remediate crops that test below 1.0% but above 0.3% legal limit.
- Remediation allows farmers to recuperate some of the value of the crop.
- FR allows for two remediation options:
  - Create biomass or whole-plant blending
  - Remove and destroy flowers, but marketing of the rest of the plant

# Final Rule Updates



## New Remediation Options for Hot Crops – Both require a re-test



Separation and removal of the flowers from stalks, leaves and seeds. (Useful for Fiber crops.)



Creation of Biomass by chopping and blending whole crop.

Please review the new “Remediation and Disposal Guidelines” document published concurrently with the Final Rule.

# Final Rule Updates



## On-Farm Disposal Options

- The IFR required all “hot” crops be destroyed in a DEA Reverse Distributor.
- Many stakeholders said that this was impractical.
  - Lack of sufficient DEA Reserve Distributors
  - Sheer amount of plant material (sometimes hundreds of acres)
  - Pollution concerns
- The FR provides several new on-farm disposal methods:
  - plowing under, mulching / composting, disking, bush mowing, deep burial, and burning
- Worked closely with DEA.

# Final Rule Updates



## DEA Laboratory Registration

- The FR mandates that a THC Compliance Test for a crop be conducted in a DEA-registered lab.
- FR did not change this requirement, but extended enforcement of the provision to **December 31, 2022**.
- We will continue to accept compliance tests from all labs until then.
- Potential for the material being tested to be “marijuana” so we worked closely with DEA partners on this issue.
  - Lack of DEA-registered labs & Process to become registered with the DEA is lengthy

# Final Rule Updates



## Performance-Based Sampling

- The IFR required every lot of hemp be tested with no exceptions.
- The FR, allows each State or Tribe that submits a plan to create “Performance-Based Sampling” protocols based on historical data that provide metrics that can be traced and provide assurance of meeting the requirements.
- These proposals must submitted to USDA for approval.
- USDA will continue to require the sampling and testing of every growing location for USDA producers at this time.

# Final Rule Updates



## University Research

- There was no distinction for university research in the IFR.
- FR allows for university researchers to obtain a license from their State, Tribe or from the USDA (depending on who is the regulating body.)
- Many stakeholders said university-level, agronomic research is needed in the hemp field.
- Subject to similar sampling procedures, disposal, and record-keeping.
- Prohibits research hemp from entering the stream of commerce.
- Intended to promote the development of new, stable hemp varieties and a better understanding of the needs of the crop.

## What Did Not Change



### **Total THC Calculation Requirement**

- The 2018 Farm Bill states that post-decarboxylation must be used to determine THC level. Post-decarboxylation means that total THC must be calculated.
- USDA cannot change this requirement through the rulemaking process.

### **Considering Cannabis with Less Than 1% THC to be Hemp**

- Received comments to increase the threshold of what is considered “hemp” from 0.3% THC to 1.0% THC.
- USDA cannot change this requirement because it is in the 2018 Farm Bill and cannot be changed through the rulemaking process.

## What Did Not Change



### Controlled Substance Felony in the past 10 Years

- States, Tribes and USDA cannot license hemp growers who have had a controlled substance felony within 10 years.
- A criminal background check must be submitted as part of the application and renewal process.
- USDA could not change this requirement because it is in the 2018 Farm Bill and cannot be changed through the rulemaking process.



## Miscellaneous Requirements



- A grower may only have one negligent violation per year.
- Your license will still be revoked for a period of 5 years after receiving 3 negligent violations within a 5-year period.
- All records and reports related to hemp must be kept and available for inspection or audit for at least three years.
- No State/Tribe can create laws or regulations that prevent the movement of hemp through their jurisdiction.
- States/Tribes do not need a law enforcement officer on-site to destruct a “hot” crop – however documentation of destruction or remediations will be part of a USDA audit.

## What the USDA Regulates

The USDA regulates:

- The production of hemp:
  - growing, harvesting, on-farm, etc.
  - Plants, crops, agriculture
- State Hemp Plans
- USDA Hemp Growers

The USDA does NOT regulate:

- The manufacturing-side of hemp
- Transportation of hemp
- The creation of products made from hemp
- FDA is the main federal entity that regulates **products** made for human and animal consumption or medicine.



# FSA Reporting



## Growers Must Report Hemp Acreage to their Local FSA Office

- This is necessary every year, after you have planted.
- Hemp growers could be in violation if not reporting to the FSA.
- FSA will assign lot numbers to hemp fields.
- Only one variety of hemp can be grown per lot.
  - Can utilize designation such as “sub-lot” for different varieties.
- FSA sends AMS reports of registered hemp.
- End of the year auditing to make sure all hemp is being reported to FSA.
- Lot designation will be tied back to sampling and testing outcomes.

# Laboratory Requirements



- It is the responsibility of the lab to report test results to the USDA.
  - A lab should also send a copy to the grower.
- Labs only need to submit the final, official THC level test documentation to USDA. USDA does not require lab reports requested by the grower to monitor the crop during the season.
- Labs must use post-decarboxylation or other similarly reliable methods as approved by USDA.
- The THC level test must reflect the Total THC derived from the sum of the THC and THCA. Measurement of Uncertainty (MU) must be calculated and reported with test results.
- Labs should review the Testing Guidelines document published concurrently with the Final Rule for further testing requirements.

# Sampling Agents



- Hemp growers cannot take their own samples.
- Sampling Agents who collect official crop samples for THC testing cannot sample their own crop or be a licensed hemp grower.
- Sampling Agents must take all required trainings by USDA.
- Labs can employ or contract with Sampling Agents to take samples.
- Please see Sampling Guidelines issued concurrently with the Final Rule for more information about hemp sampling.

# USDA Producer Reporting



- The current reporting forms are being updated to reflect the changes to the FR requirements.
- Submit reports to: [forms.hemp@usda.gov](mailto:forms.hemp@usda.gov)
- As a USDA Producer, you must submit the:
  - USDA Producer Disposal and Remediation Report (AMS 27). This form needs to be submitted to USDA no later than 30 days after a disposal or remediation occurs.
  - USDA Producer Annual Report (AMS 28). This form needs to be submitted to USDA no later than December 15<sup>th</sup> of each year, regardless of if you planted.





For more information please visit:

<https://www.ams.usda.gov/rules-regulations/farmbill-hemp>

email or phone:

[Farmbill.Hemp@usda.gov](mailto:Farmbill.Hemp@usda.gov) and 202-720-2491

Submit reports to:

[Forms.Hemp@usda.gov](mailto:Forms.Hemp@usda.gov)