



Summary of USDA Final Hemp Rules (Released January 15, 2021)

“Acceptable hemp THC level” defined. Under the USDA final rule, the acceptable THC level for compliance with a State, Tribal, or USDA hemp plan is dependent on the measure of uncertainty of the laboratory test used. *As long as the range of reported THC content includes 0.3% or less, the sample will be deemed acceptable.* EXAMPLE: Lab reports 0.4% THC concentration with a measure of uncertainty of $\pm 0.1\%$. Because the reported range includes 0.3%, the sample would be acceptable under USDA rules. Measure of uncertainty must be reported with results. Testing must include a validated testing methodology using post-decarboxylation, or similarly reliable method, and must include **total THC content** (THC + THCA).

State and Tribal Hemp Production Plan

Sample Collection Requirements. Samples must be collected within 30 days of anticipated harvest completion. Samples must be collected with a 95% confidence level that no more than 1% of the lot would exceed the acceptable THC level and must represent the homogeneous composition of the lot. DEA registration for testing labs will be required, but the USDA currently delayed this registration until December 31, 2022. Samples from one lot may not be commingled with hemp plant materials from another lot. Samples that exceed the acceptable THC limit must be disposed of according to DEA and CSA regulations. Harvesting may begin before test results are received, but the hemp may not be released into commerce until tests confirm the lots are compliant.

Disposal and Remediation. When samples test above the 0.3% THC limit, the lot from which those samples came must be disposed of. Growers have the opportunity to remediate “hot” hemp by removing and destroying flower material only but retaining the rest of the plant (the stalk, stems, leaf material, and seeds) or shredding the entire plant into biomass and re-testing it.

Violations and Penalties. There are two levels of violation under the USDA rules: *Negligent violations* include, but are not limited to, failure to obtain a license or production of cannabis plants with a THC concentration above 1.0%. Negligent violations will be subject to corrective action plans that provide a date by which the producer must correct the negligent violation. Negligent violations will not result in criminal enforcement actions. Three negligent violations in 5 years will result in hemp program ineligibility for 5 years. *Culpable violations* include any violation with a greater state of mind than negligence (e.g., recklessly, knowingly, or intentionally engaging in the violation). Following a culpable violation, the State Department of Agriculture will report the violating producer to the U.S. Attorney General and chief law enforcement officers of the state where applicable.

Reporting Requirements. Hemp crop acreage must be reported to the USDA Farm Services Agency (FSA), including addresses, acreage dedicated to the production of hemp, and license or authorization identifiers. The following reports must be submitted to the USDA by the first of each month: *hemp producer report, hemp disposal report, annual report, test results report.*

Recordkeeping Requirements. Recordkeeping under State or Tribal hemp production plans is left to the states.



Felony Restrictions. Persons with state or federal felony convictions related to a controlled substance are subject to a 10-year ineligibility period on producing hemp. This does not apply to producers authorized under the 2014 Farm Bill and whose conviction was before December 20, 2018.

USDA Hemp Production Plan

License Applications. New licenses for USDA authorizations must be accompanied by a criminal history report for all key participants within 60 days of submitting the application.

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Producer Audits. USDA may perform remote or in-person audits of producers at least once every 3 years. Audits may include visits to farms, fields, greenhouses, storage facilities, or other facilities associated with the producer's hemp operation.

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Recordkeeping Requirements. Records and reports related to hemp acquisition, production, handling, storage, and disposal must be kept for 3 years and made available for inspection. Hemp crop acreage must be reported to the USDA Farm Service Agency (FSA), including addresses, acreage dedication to the production of hemp, and license or authorization identifiers.

Reporting Requirements. Producers under the USDA's plan must provide the following reports: a *USDA hemp plan producer disposal form* no later than 30 days after completion of disposal; *USDA hemp plan producer annual report* by December 15 each year; and a *test results report*.

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