



South Carolina  
**DEPARTMENT OF AGRICULTURE**

Hugh E. Weathers, Commissioner

## USDA HEMP INTERIM FINAL RULE SUMMARY

The Agricultural Marketing Service, USDA, Interim Final Rule regarding hemp production was released October 31, 2019, and can be accessed in its entirety here: [ams.usda.gov/sites/default/files/media/AMS\\_SC\\_19\\_0042\\_IR.pdf](https://ams.usda.gov/sites/default/files/media/AMS_SC_19_0042_IR.pdf)

USDA's resources and documents, such as information to producers, FAQs, and other material can be found here: [ams.usda.gov/rules-regulations/hemp](https://ams.usda.gov/rules-regulations/hemp)

### BRIEF SUMMARY

#### 1. IMPORT/EXPORT

- A. Importation of hemp seeds is covered under the USDA APHIS regulations, so the rule does not address hemp seed import or export.

#### 2. SEED CERTIFICATION

- A. No seed certification program is included in the rule

#### 3. STATE PLAN REQUIREMENTS

##### A. Land Used for Production

- i. The information required to be collected includes a legal description of the land and geospatial location, which the USDA Farm Service Agency (FSA) can help provide, for each field, greenhouse, or other site where hemp is produced. Any changes need to be reported.
- ii. In addition to the land information required to be submitted to the appropriate State or Tribe, licensed producers must also report their hemp crop acreage to the FSA.

##### B. Sampling and Testing for Delta-9 Tetrahydrocannabinol

- i. Within 15 days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing. **USDA is explicitly asking for feedback on this section of the rule.**
- ii. All hemp fields must be tested prior to harvest
- iii. Samples must be delivered to a DEA registered laboratory for testing
- iv. Samples **MUST** be tested using post-decarboxylation or other similarly reliable analytical methods where the total THC concentration level reported accounts for the conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC.
- v. Testing methodologies currently meeting these requirements include those using gas or liquid chromatography with detection.
- vi. The total THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis.

### C. Disposal of Non-Compliant Plants

- i. If a producer has produced cannabis exceeding the acceptable hemp THC level, the material must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a schedule I controlled substance under the Controlled Substance Act.

### D. Compliance With Enforcement Procedures Including Annual Inspection of Hemp Producers

- i. State and Tribal plans must include compliance procedures to ensure hemp is being produced in accordance with the requirements of the Interim Rule. This includes requirements to conduct annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not being produced in violation of the USDA Interim Rule.
- ii. State Plans must include a procedure to handle violations, including corrective action plans for negligent violations.
- iii. Producer who negligently violation a state plan three times in a five-year period will be ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement.
- iv. Negligent Production of Hemp above 0.3% but not above 0.5%
  - a. The rule specifies that hemp producers do not commit a negligent violation if they produce plants that exceed the acceptable hemp THC level and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis.

- b. USDA recognizes that hemp producers may take the necessary steps and precautions to produce hemp, such as using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produce plants that exceed the acceptable hemp THC level. USDA seeks comments whether there are other reasonable efforts to be considered.

- c. USDA believes that a hemp producer in that scenario has exercised a level of care that a reasonably prudent person would exercise if the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis.

- d. Although a producer would not be considered “negligent,” they would still need to dispose of the plants if the THC concentration exceeded the acceptable hemp THC level.

- v. Plans must also include provision addressing reckless and knowing violations

- vi. If it is determined a violation was committed with a culpable mental state greater than negligence, the State department of, as applicable, shall immediately report the producer to the Attorney General, USDA, and the chief law enforcement officer of the State.

- vii. State plans also must prohibit any person convicted of a felony related to a controlled substance under State or Federal law before, on, or after the enactment of the 2018 Farm Bill from participating in the State plan and from producing hemp for 10-years following the date of conviction.