

Federal Hemp Rules Finalized; RI Plan Approved

The U.S. Department of Agriculture (USDA) on January 19, 2021 published its finalized federal regulations governing the cultivation of hemp. This comes two years after the crop was legalized at the federal level through the 2018 Farm Bill, which required USDA to develop rules for an industrial hemp program. Since then, USDA has released various proposals, solicited public input and included hemp in several government programs such as those allowing for crop insurance. Prior pilot programs under which “industrial hemp” was approved by both the USDA and state departments of agriculture under the 2014 Farm Bill, are expiring, to be replaced by a regulatory scheme under the 2018 Farm Bill. The 2018 bill provides for much more expansive hemp growth – including no restrictions on the sale, transport, or possession of hemp-derived products so long as those products are produced in a manner consistent with other state and federal law.

While the final rule doesn’t include everything hemp and cannabis stakeholders sought, there were some helpful modifications made throughout the process before the issuance of the final rules. Notable provisions in the rules include:

- Hemp processors will have some additional flexibility when it comes to THC negligence standards that would require disposal of the crop if exceeded. Hemp is defined under federal statute as containing no more than 0.3 percent THC, and now it can reach 1 percent, rather than 0.5 percent, without necessitating eradication.
- USDA maintains its requirement that hemp be tested only at labs certified by the Drug Enforcement Administration (DEA), but it is delaying enforcement of that rule until December 31, 2022.
- The window for required sampling of hemp plants was extended from 15 to 30 days, which businesses say will prevent backlogs in testing.
- USDA still requires pre-harvest samples to come from the cannabis flower rather than the whole plant, but it will allow those samples to be taken from five to eight inches from the stem.
- USDA will still mandate that hemp must be tested for total THC content, rather than delta-9 THC alone as stakeholders requested.
- Instead of relying on strict federal sampling requirements, the rule provides for “performance-based” sampling.

President Biden’s nominee to head Agriculture, Tom Vilsack, previously served as Secretary of Agriculture under President Obama, and in that capacity helped manage the implementation of the 2014 hemp pilot programs. He’s viewed as an advocate for the hemp industry.

And even as the USDA was crafting its final rules, it has spent past months reviewing and approving numerous state and tribal regulatory proposals—most recently approving Rhode Island’s hemp program proposal in early January. Rhode Island’s hemp plan is available to [view here](#).

The USDA final rule is available to [view here](#).

Partridge Snow & Hahn’s [Cannabis Advisory Practice Blog](#) provides updates on marijuana law and policy, covering some of the risks and opportunities in the industry, and makes recommendations regarding best practices. **If you are interested in receiving these updates via email, please submit the form below:**

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