

Overview of USDA Final Hemp Rule

Tiffany Dowell Lashmet
Texas A&M AgriLife Extension
<http://agrilife.org/texasaglaw>



SOUTHERN
EXTENSION
RISK
MANAGEMENT
EDUCATION

TEXAS A&M
AGRI LIFE
EXTENSION

Disclaimer

This presentation is for educational purposes only as well as to give general information and a general understanding of the law, not to provide specific legal advice. This presentation does not create an attorney/client relationship and should not be used as a substitute for the advice of a licensed attorney.



SOUTHERN
EXTENSION
RISK
MANAGEMENT
EDUCATION

TEXAS A&M
AGRI LIFE
EXTENSION

Overview of USDA Final Hemp Rule

- Effective March 22, 2021
- Sampling window increased from 15 days to 30 days before harvest.
- Modified where samples taken from the plant to allow more stems and leaves. IFR said top 1/3. FR says from the flowering tops of the plant by cutting 5-8" from the main stem (includes the leaves and flowers), terminal bud (occurs at the end of a stem), or central cola (cut stem that could develop into a bud).



Overview of USDA Final Hemp Rule (cont)

- Allows flexibility on sampling methodology from IFR specific protocol to allowing states to implement a “performance-based” method that must be approved by USDA & may consider:
 - Seed certification process
 - Whether producer is conducting research on hemp at institution of higher education or government funded.
 - Whether producer has consistently produced compliant hemp plants over a period of time.
 - Whether a producer is growing “immature” hemp such as seedlings, clones, microgreens, or other non-flowering cannabis.
 - Other similar factors
- USDA Sampling Guide:
<https://www.ams.usda.gov/sites/default/files/media/SamplingGuidelinesforHemp.pdf>



Overview of USDA Final Hemp Rule (cont)

- Extends waiver of DEA-registered laboratory testing requirement through 12/2022.
- Increased safe harbor standard for negligence from .5% to 1%.
- Maximum number of negligent violations a producer may receive in a growing season is 1.



Overview of USDA Final Hemp Rule (cont)

- USDA Final Rule allows for either remediation option.
 - Remediation
 - May remove & destroy flowering material and retest stalk, stems, leaf, seed and re-test.
 - May shred entire plant to create biomass-like material and re-test.
- USDA Final Rule allows for disposal by:
 - Plowing under
 - Mulching/composting
 - Disking
 - Shredding with bush mower or chopper
 - Burying
 - Burning
 - Remediation
- USDA Remediation & Disposal Guidelines:
<https://www.ams.usda.gov/sites/default/files/media/HempRemediationandDisposalGuidelines.pdf>



Conclusion

- Many amendments allow more flexibility for producers.
- Important to watch how your State or Tribe implements these into their state statutes and regulations.
- Several controversial regulations were not changed.
 - Total THC still required measurement.
 - THC content limitation remains at .3%.
 - Whole-plant sampling still not allowed.

