



# Agriculture Improvement Act of 2018

“the farm bill”



## Definition of Hemp

- ▶ The term 'hemp' means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and **all derivatives, extracts, cannabinoids**, isomers, acids, salts, and salts of isomers, **whether growing or not**, with a **delta-9** tetrahydrocannabinol concentration of **not more than 0.3 percent** on a dry weight basis.



# Hemp Production

- ▶ State and Tribal Plans
  - ▶ If a State or Indian tribe wishes to have primary authority for hemp production, must submit a **plan** to the Secretary of Agriculture (USDA)
  - ▶ Through the State's department of agriculture
  - ▶ in consultation with the Governor and chief law enforcement officer of the State



# The Plan

- Requirements
  - a practice to **maintain relevant information regarding** land on which hemp is produced, including a **legal description** of the land, for a period of **not less than 3 calendar years**
  - a **procedure for testing**, using post-decarboxylation or other similarly reliable methods, **delta-9 tetrahydrocannabinol concentration** levels of hemp produced
  - a procedure for the effective **disposal** of
    - plants, whether growing or not, that are produced in violation of the law
    - and products derived from those plants



# The Plan, continued

- Requirements, continued
  - a procedure for conducting **annual inspections** of, at a minimum, a **random sample** of hemp producers to verify that hemp is not produced in violation of the law
  - a **procedure** for submitting the following **information** to the Secretary not more than 30 days after the date on which the information is received:
    - contact information for each hemp producer
    - a legal description of the land on which hemp is grown by each hemp producer
    - the status of a license
  - a **certification** that the State has the **resources and personnel** to carry out the practices and procedures



# Violations

- ▶ Negligent
  - ▶ failing to provide a legal description of land on which the producer produces hemp;
  - ▶ failing to obtain a license
  - ▶ producing *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3percent on a dry weight basis.



## Violations, continued

- ▶ Corrective Action Plan
  - ▶ a **reasonable date** by which the hemp producer shall correct the negligent violation; and
  - ▶ a requirement that the hemp producer shall **periodically report** to the State department of agriculture on the compliance of the hemp producer with the plan for a period of **not less than the next 2 calendar years**.



## Violations, continued

- ▶ Results of a negligent violation
  - ▶ A hemp producer that negligently violates a State plan **shall not as a result of that violation be subject to any criminal enforcement action** by the Federal Government or any State government, Tribal government, or local government.





## Violations, continued

- ▶ Repeat Violations

- ▶ A hemp producer that **negligently** violates the plan **3 times in a 5-year period** shall be ineligible to produce hemp for a period of **5 years** beginning on the date of the third violation.



## Violations, continued

- ▶ Other Violations

- ▶ If the State department of agriculture determines that a hemp producer in the State has violated the State plan with a **culpable mental state greater than negligence**
- ▶ the State department of agriculture **shall immediately report** the hemp producer to the **Attorney General and the chief law enforcement officer**



## Effect of a Drug Related Felony

- ▶ Any person convicted of a **felony relating to a controlled substance** under State or Federal law before, on, or after the date of enactment of this subtitle shall be **ineligible, during the 10-year period**



## Effect of a False Statement

- ▶ Any person who materially **falsifies any information** contained in an application to participate in the program established under this section shall be **ineligible to participate in that program.**



# Hemp and the CSA

- Removes hemp from the federal Controlled Substances Act by inserting the following:
  - The term 'marihuana' **does not include hemp**
  - Schedule I, as set forth in the CSA is amended by inserting: "'...**except for tetrahydrocannabinols in hemp...**"



## Other provisions...

- ▶ The Secretary of Agriculture shall promulgate **regulations and guidelines**
- ▶ **No effect on other laws**, including the **Federal Food, Drug, and Cosmetic Act**
- ▶ No State or Indian Tribe shall prohibit the **transportation or shipment of hemp or hemp products** produced in accordance with the law through the State or territory
- ▶ Adds hemp to the **Federal Crop Insurance Act**



## USDA Interim Final Rule

- ▶ Published October 31, 2019 and effective through November 1, 2021
- ▶ governs the production of hemp under the 2018 Farm Bill
- ▶ does not affect industrial hemp that was or is being cultivated under the 2014 Farm Bill programs (States can continue pilot programs until October 31, 2020)



## USDA Interim Final Rule, continued

- ▶ Highlights
  - ▶ **all hemp** must be tested (every “lot”)
  - ▶ the sampling/testing window is within **15 days** prior to harvest
  - ▶ establishes a negligence threshold for growers of **0.5%**
  - ▶ instructions for sampling specify that floral material should be collected from the **top third** of the plant