



# Overview of USDA Hemp Final Rule

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# 2014 Farm Bill

- State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes.
- Did not allow hemp production for general commercial activity.
- Did not remove industrial hemp from the controlled substances list.
- Did not include any USDA data collection or oversight

# 2018 Farm Bill

- Removed industrial hemp from Schedule I list under the Controlled Substances Act.
- Directed USDA to
  - ✓ Develop a domestic production program to review and approve plans submitted by States and Indian tribes
  - ✓ Establish a Federal plan for producers in States/Tribes that do not have a USDA-approved plan as long as the production of hemp is not prohibited in those States/Tribes.
- Extended the 2014 Farm Bill provisions (further extended later) until **Jan. 1, 2022**.
- States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under a State or Tribal plan or under a license issued under the USDA plan, or the 2014 Farm Bill.



## Agricultural Marketing Service

<b>Producing Hemp under the 2018 Farm Bill (U.S. Domestic Hemp Production Program)</b>	<b>Producing Hemp under the 2014 Farm Bill (Industrial Hemp Research Only)</b>
Requires participating State/Tribal Nations to submit a production plan to USDA for approval that meets the requirements outlined in the Interim Final Rule published October 31, 2019.	Does not require participating State/Tribal Nations to submit a production plan to USDA for approval however, all participating producers must adhere to State requirements.
States and Tribes with approved plans can produce hemp.	States and institutions of higher education are permitted to produce hemp as part of a pilot program for research until October 31, 2020.
The plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.	The plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.
Producers are required to register their production area with FSA.	Producers are generally required to register their production area with the State department of agriculture.
Sampling procedures must ensure that a representative sample is collected and delivered to a DEA-registered lab for testing within 15 days prior to the anticipated harvest.	There are different sampling procedures or requirements in each State. Testing does not require the use of DEA-registered labs.
Hemp produced is subject to testing requirements for Total THC.	Sampling or testing procedures vary by State.
Non-compliant material must be disposed of using DEA and CSA procedures.	Requirements related to timing of harvest, testing or disposition of non-compliant material vary by State.
Producers cannot move any product into commerce before receiving a passing test result.	Producers can only grow hemp for research purposes and there are different requirements for products entering commerce depending on the State.
Requires information sharing with law enforcement.	There are varying requirements to share information with law enforcement.
Financing available through Farm Credit System Banking Institutions	Financing may not be available through Farm Credit System Banking Institutions

# USDA Final Rule

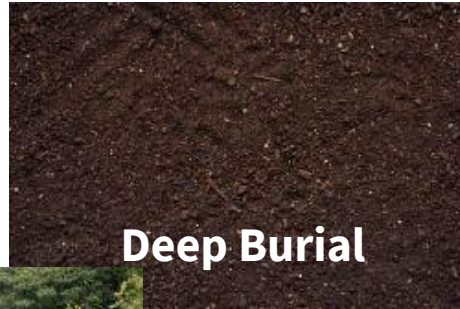
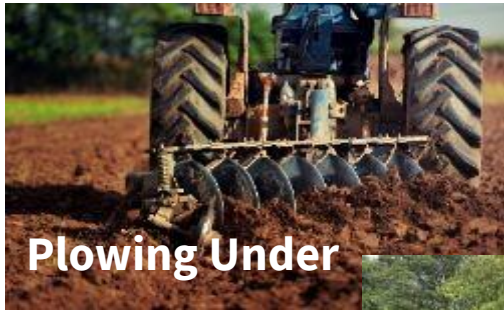
- Published Jan. 1, 2021; effective March 22, 2021
- Key provisions of the final rule include:
  - **Negligent violation**
  - **Timing of sample collection**
  - **Sampling method**
  - **Extent of Tribal Regulatory Authority over the Territory of the Indian Tribe**
  - **Disposal and remediation of non-compliant plants**
  - **Testing using DEA-registered laboratories**

# Lab Testing Requirements

- DEA-registered lab requirement for testing does not go into effect until **December 31, 2022**
- [List of DEA-registered labs](#)

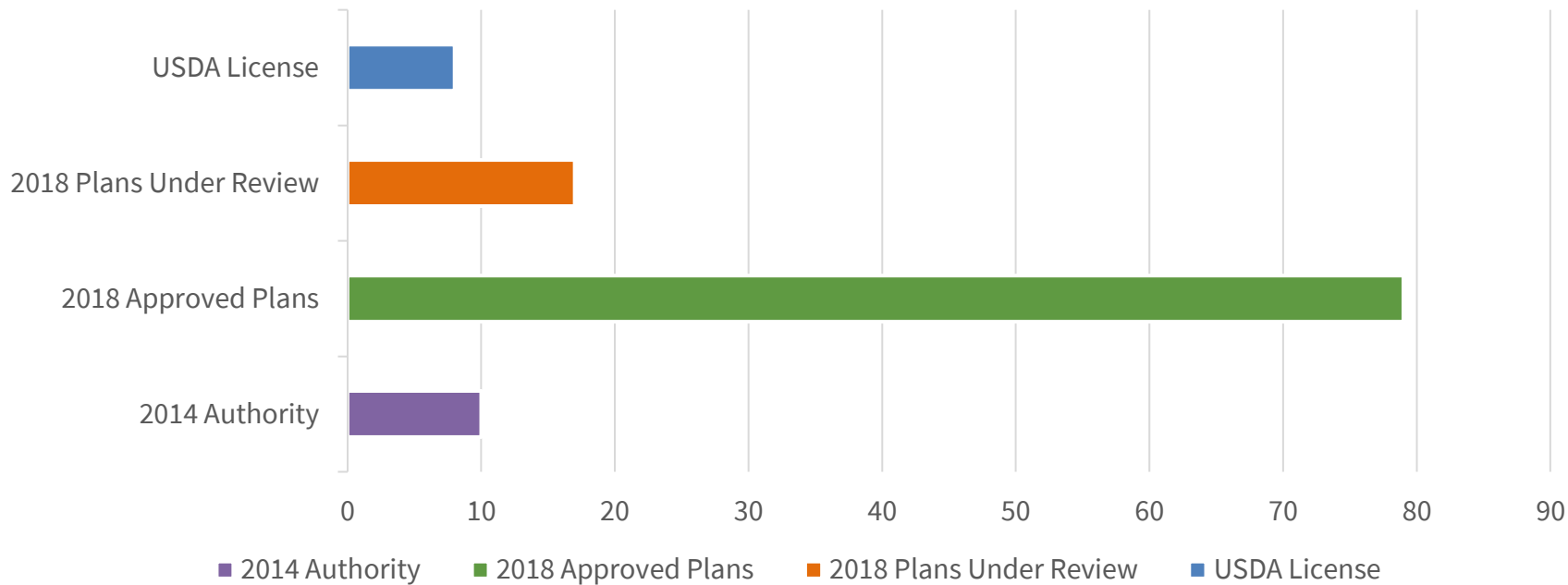
# Hot Hemp Options

- [AMS Hemp Remediation and Disposal Guidance](#)
- [Hemp disposal options](#)



# Status of Implementation

## Plans





# USDA Hemp Resources

- Information about implementation can be found on AMS's website at:  
<https://www.ams.usda.gov/rules-regulations/hemp>.
- Questions can be sent to  
[Farmbill.Hemp@usda.gov](mailto:Farmbill.Hemp@usda.gov).



# Legal and Practical Issues in the Evolving World of Cannabis Regulation

Legal, Regulatory, and Economic Challenges Facing Cannabis Growers

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# Regulatory Perspectives on Cannabis/Hemp Agriculture



Image courtesy of [hempgazette.com](http://hempgazette.com)

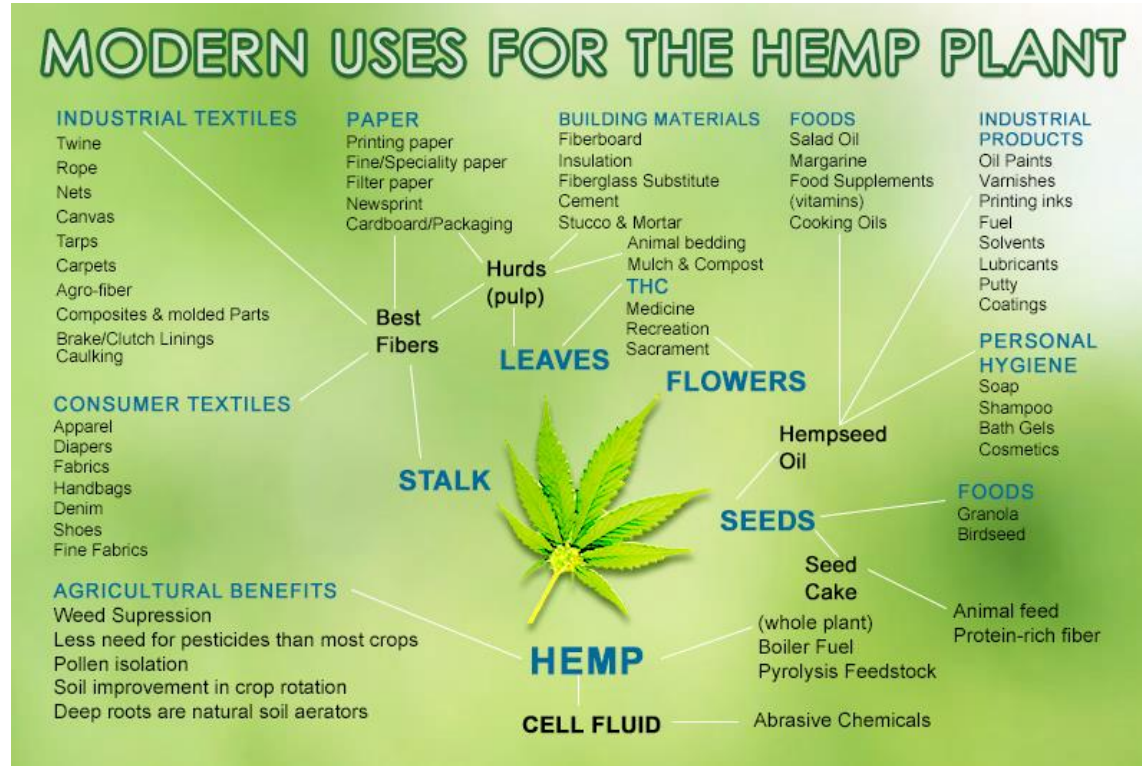
# A Brief History

- Cultivation of hemp is one of the oldest industries in the world
- Hemp was a major crop during the Colonial Era and Early Republic
- Marihuana Tax Act (1937)
  - Effectively begins era of hemp prohibition
  - Tax and licensing regulations make hemp cultivation difficult
- Brief period of revitalization during WWII
- Controlled Substances Act (1970) blurs distinction between hemp and marijuana, therefore affecting hemp production

# Hemp or Marijuana

Type	Cannabis?	Chemical Makeup	Psychoactive Properties?	Cultivation	Applications
Hemp	Yes	Low THC (less than 0.3%)	No	Grown as an agricultural crop	Automobiles, Body care, Clothing, Construction, Food, Plastic, others
Marijuana	Yes	High THC (5%-25%)	Yes	Grown as an agricultural crop	Medicinal and recreational use

# Uses for Industrial Hemp



Source: Canada Health Services

# 2018 Farm Bill – Hemp Provisions

2018 Farm Bill provisions re hemp:

- Hemp is defined as a cannabis plant that contains no more than 0.3 percent THC; cannabis with a higher THC content remains classified as a controlled substance under Federal law.
- Hemp cultivation will be subject to joint Federal/State regulatory control.
- Hemp-derived cannabidiol (CBD) derived from legally produced hemp (i.e., in compliance with State and Federal regulations) is legal.

# Hemp: USDA-Approved Plans

- As of November 2021, USDA has approved 72 State, Tribal Government, and Territorial Hemp Production Plans
- Hemp Production Plans for Non-Federal Governments must include, *inter alia*:
  - Procedures for "accurate and effective sampling testing using post decarboxylation or similar reliable methods"
  - Procedures for disposing of plants that do not meet the THC content requirements of the USDA regulations



# Ways to Grow Cannabis: Outdoors



Source: <https://csalabs.com/what-are-different-ways-to-grow-cannabis/>

# Ways to Grow Cannabis: Greenhouse



Source: <https://csalabs.com/what-are-different-ways-to-grow-cannabis/>



# “Hot” Hemp Burned On-Site



Photo from USA Today

# Cannabis “Waste”

- For every acre of cannabis-hemp harvested, there are 2-5 tons of stalk “waste”
- For every pound of cannabis-marijuana harvested, there 1.5-4.5 pounds of stalk “waste”

# Cannabis “Waste”

Audience question:

In 2019, how many tons of cannabis biomass waste was produced in the U.S.?:

- (A) 1 million tons
- (B) 2 million tons
- (C) 5 million tons
- (D) 10 million tons

# Federal Regulation – EPA

- Currently processing pesticide registrations for use on hemp under FIFRA
- EPA is not giving consideration to pesticide registrations for use on marijuana

# Cannabis Pests and Diseases

- Cottony Cushion Scale
- Mildew
- Whitefly
- Fungi or Virus
- Spider Mite
- Rust
- Black / Greenfly
- Bud / Toprot
- (Black) spot disease





# Current Situation – Hemp

- There are currently 59 registered pesticide products that have been approved by EPA for use on hemp crops. <https://www.epa.gov/pesticide-registration/pesticide-products-registered-use-hemp>
- Of the 59, 58 are biopesticides and 1 is a relatively benign conventional chemical pesticide.
- Many of these hemp-approved registered pesticides have an exemption from the requirement for a tolerance under the FFDCA



**Nixon** (1969-1974)

**Ford** (1974-1977)

**Carter** (1977-1981)

**Reagan** (1981-1989)

## EARLY 1970s

**PRESIDENT NIXON PROMOTES "WAR ON DRUGS"** including programs killing unharvested cannabis crops with toxic herbicides



## REAGAN ADMINISTRATION

Given the illegal status of cannabis, **PRESIDENT REAGAN'S "LAW AND ORDER"** emphasis led to little public outcry about health risks



**G.W. Bush** (2001-2009)

**Clinton** (1993-2001)

**Bush** (1989-1993)

## 1996

**CALIFORNIA BECOMES FIRST STATE TO LEGALIZE MEDICINAL CANNABIS**



**COLORADO AND WASHINGTON BECOME FIRST STATES TO LEGALIZE CANNABIS FOR ADULT-USE**

**2012**



**STATE OFFICIALS ASK EPA ABOUT LEGAL PESTICIDE USE ON CANNABIS**

**2014**



**HOUSENGER LETTER PERMITS STATE-SPECIFIC PESTICIDE APPROVAL FOR CANNABIS**

**2015**



**PRUITT REVERSES 2015 HOUSENGER LETTER**

**2017**

**Obama** (2009-2017)

**Trump** (2017-current)

# Current Situation – Cannabis-Marijuana

- There are no EPA-registered pesticide products approved for use on cannabis-marijuana
  - EPA has not established food tolerances or exemptions for cannabis-marijuana grown for consumption
- The world of section 152.25(f) products is murky; some may be deemed not prohibited from use on cannabis-marijuana

# Concerns with Using Registered Pesticides on Hemp and Marijuana

- State “lists” are limited
- Most registrants of EPA-licensed pesticides do not want their products used on cannabis-marijuana
- At present, efficacy data, rate of application, and other elements normally determined as part of the pesticide registration process are absent for cannabis-marijuana
- Lack of tolerances creates risk for cannabis-marijuana grown for consumption; no risk assessment to establish tolerances; states are creating their own residue standards/action levels and enforcing standards on registrants for active ingredient contaminants

# Concerns with Using Registered Pesticides on Hemp and Marijuana

- State specific information regarding cannabis pesticides:
  - [https://drive.google.com/file/d/1GLuckQPE4bNTPi\\_EitrEGMPkyxf8YPG/view](https://drive.google.com/file/d/1GLuckQPE4bNTPi_EitrEGMPkyxf8YPG/view)
  - <https://drive.google.com/file/d/1upPu4MArI5Wcdy0eOgP7fkgFDTTsmQo0/view>
  - <https://www.cdpr.ca.gov/docs/cannabis/index.htm>
  - <https://www.colorado.gov/pacific/agplants/cannabis-faq>
  - <https://www.colorado.gov/pacific/agplants/pesticide-use-cannabis-production-information>
  - <https://www.oregon.gov/oda/shared/Documents/Publications/PesticidesPARC/Guideli stPesticideCannabis.pdf>
  - <https://agr.wa.gov/departments/marijuana/pesticide-use>
  - <https://cms.agr.wa.gov/getmedia/60b63394-9f65-4f58-9820-bf11dddf9658/398-WSDACriteriaForPesticideUseOnMarijuana.pdf>