

## Edits and Questions for the Virginia hemp plan (as of 10/6/2021):

**NOTE - The following items reference the PDF page numbers.**

### **Virginia plan document:**

1. Page 1, “...and geographic data sufficient for locating the land on which the applicant intends to grow hemp.” Will this allow VDACS to collect GPS coordinates and other requirements of the Final Rule? Please clarify.

VDACS Response: Subdivision 3.2-4115(B)(2) of the Virginia Industrial Hemp Law provides the authority under which VDACS currently collects from an industrial hemp grower the GPS coordinates of each of the grower’s industrial hemp production fields. Additionally, Section 3.2-4115 of the Virginia Industrial Hemp Law also includes authority for the Commissioner to collect “any other information” from applicants for an industrial hemp registration.

2. Page 2, Will this language allow VDACS to enforce the collection 5-8 inches as required in the Final Rule? Please clarify.

VDACS Response: VDACS does not have statutory authority over the sampling agents; however, VDACS will remove a sampling agent from the list of individuals who have completed sampling agent training if VDACS determines a sampling agent is not sampling in accordance with the Field Sampling Guidelines, which require the collection of the top 5-8 inches of an industrial hemp plant.

Added Item 6 to the Virginia Regulatory Plan section addressing 7 CFR 990.3(a)(2). See page 2.

3. Page 2, “*VDACS's 2022 Field Sampling Guidelines establish specific activity or industrial hemp crops that may not be subject to sampling. Growers who are researchers at institutions of higher education and whose hemp is not entering commerce, certain hemp crops produced for the purpose of fiber, and the transfer of hemp transplants or clones to the location at which these plants will grow to maturity may not be subject to sampling.*” This would be considered Performance-based sampling. These metrics would need to be included in your plan for approval. You would need a section in your plan for Researchers, a section for microgreens/transplants, and a section for fiber. Please add further details to establish Performance-based sampling metrics in your plan.

VDACS Response: Revised. See Item 12 in the Virginia Regulatory Plan section addressing 7 CFR 990.3(a)(2) on page 3.

4. Page 3, “VDACS will **request** that Registered Industrial Hemp Growers submit an Industrial Hemp Planting and Propagation Report and an Industrial Hemp Harvest Report, both of which VDACS will use to ensure that sampling is conducted within the 30 days prior to the grower’s anticipated harvest date.” Sampling must be conducted within 30 days, will this allow VDACS to meet this requirement? Please clarify.

If a State or Tribe intends to include Performance-based Sampling as part of their Plan, you must include those metrics in your Plan. Plans without Performance-based metrics included, will be considered to be using the Standard Sampling Method where every grower is sampled and tested for compliance.

Please return this document. Please provide answers directly into this document, including, but not limited to, how the items in the document were addressed within the Plan, page numbers for reference, and any explanations that you feel would give the USDA insight.

VDACS response: The Industrial Hemp Planting and Propagation Report will notify VDACS that an industrial hemp lot has been planted and as to when the grower anticipates harvesting this lot. This information will enable to VDACS to know when sampling should occur and, as such, when VDACS should anticipate receiving the results of laboratory analysis.

The Industrial Hemp Harvest Report will notify VDACS that harvest has occurred. The absence of an Industrial Hemp Harvest Report will alert VDACS to the potential that the grower did not harvest 30 days after sampling and that additional sampling is needed. VDACS will direct growers accordingly.

By initialing and signing the application for an Industrial Hemp Grower Registration, the applicant agrees to submit these reports.

5. Page 4: “*VDACS will assess compliance and negligence using the testing laboratory's measurement of uncertainty by subtracting from the measured total delta-9 THC concentration stated on the testing laboratory's Report of Analysis (ROA) the measurement of uncertainty stated on the testing laboratory's ROA.*” This is not an accurate restatement of measurement of uncertainty. Please use language from Final Rule or amend to be in conformance with the final rule.

VDACS Response: Revised Item 3 in the Virginia Regulatory Plan section addressing 7 CFR 990.3(a)(3). See page 4.

6. Page 4, “*An acceptable total delta-9 THC concentration is one that does not exceed the combination of 0.30 percent and the measurement of uncertainty stated on the testing laboratory's ROA (hereinafter, "acceptable THC level").*” The Final Rule uses “acceptable hemp THC level.” Consider using the same term to prevent confusion with your growers. Your definition is missing some components, please review the definition of “acceptable hemp THC level” in the final rule and amend. Please use this term consistently throughout your plan to prevent confusion.

VDACS Response: Replaced “acceptable THC level” with “acceptable industrial hemp THC level” throughout Plan, grower registration application, and 2022 Field Sampling Guidelines.

7. Page 4 and page 8, Remediation. All forms of remediated hemp must be resampled and tested to ensure compliance, not just biomass. Please add language. Further, any form of remediated hemp that still tests over the acceptable hemp THC level must be destroyed, not just biomass/shredded.

VDACS response: Revised Item 6 in the Virginia Regulatory Plan section addressing 7 CFR 990.3(a)(3). See page 5.

8. Page 4, “VDACS will identify laboratories that meet the requirements established in § 990.3(a)(3)(iii)(A) through (H). Laboratories will have validated THC concentration testing

If a State or Tribe intends to include Performance-based Sampling as part of their Plan, you must include those metrics in your Plan. Plans without Performance-based metrics included, will be considered to be using the Standard Sampling Method where every grower is sampled and tested for compliance.

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methods and use postdecarboxylation ~~or another similarly reliable method...~~” This method would need to be re-submitted to the USDA for review and approval.

VDACS Response: Replaced “postdecarboxylation or another similarly reliable method” with “gas or liquid chromatography with detection”. See Item 8 in Virginia Regulatory Plan addressing 7 CFR 990.3(a)(3). See page 5.

9. Page 8, Annual Inspections: This section only indicates that VDACS has the authority to conduct random inspections. It does not state the VDACS will conduct random inspections annually. Please add language.

VDACS response: Item 2 added to the Virginia Regulatory Plan section addressing 7 CFR 990.3(a)(7). See page 9.

10. Page 15, Application, FSA: “*Registered Industrial Hemp Growers shall report hemp crop acreage to the USDA Farm Service Agency (FSA).*” More things are required to be reported to FSA than acreage. Please review final rule and add language.

VDACS response: Language added to Section Five of the application.

11. Page 15, Application: As noted in your plan, you will direct growers on the application to have the labs they use submit test results directly to USDA. This does not appear to be included in your application.

VDACS response: Language added to Section Five of the application.

12. Both the FSA and the Final Rule use the term, “lot.” Your plan uses several terms, including, “lot,” “production field” and “crops.” Consider using one term. Consider using the term “lot” from the final rule. Or consider adding a definition of “production field” to include “lot,” if appropriate.

VDACS response: Replaced “production field” and “crop” with “lot,” where appropriate. Retained the term “production field” when used in a description of the Virginia Industrial Hemp Law, as “lot” is not used in the Law.

\*Please review the attached Checklist document and clarify or remedy any outstanding items within the Checklist.

**NOTE:** Boxes marked “unclear” indicate that VDACS has may not have sufficient language in their plan language to enforce the final rule requirement/s. If VDACS feels it has sufficient authority, please explain below in this document.



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<p><u>2018 Farm Bill</u> Criteria and USDA <u>Final Rule</u> Requirements</p> <p>State or Tribal Government name: <input type="text" value="Virginia"/></p>	<p>Satisfies Requirement (Yes, No or N/A)</p>	<p>Applicable Regulations, Laws or Guidelines</p>	<p>Reviewer Comments</p>	<p>VDACS Notes</p>
<p><b>Plan to Maintain Relevant Producer and Land Information</b></p>				
<ul style="list-style-type: none"> <li>Collect, maintain, and provide to USDA contact information for each hemp producer licensed or authorized in the state or territory of the tribal government (whichever applicable).</li> </ul>	<p>Yes</p>	<p>990.3 (a) (1)</p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	
<ul style="list-style-type: none"> <li>Provide contact information described in 990.70 (a) (1) for each hemp producer covered under the plan including: name, address, telephone number, and email address (if available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of the key participants, an email address (if available), and EIN number of the business entity. This information can be provided via the AMS-23 form via mail, fax, or email.</li> </ul>	<p>Yes</p>	<p>990.3 (a) (1) (i)</p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	
<ul style="list-style-type: none"> <li>A legal description collected and forwarded for land where hemp is produced in the state or tribal territory.</li> </ul>	<p>Yes</p>	<p>990.3 (a) (1) (ii)</p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	
<ul style="list-style-type: none"> <li>Maintain the status of licensed producers (and any changes) and license or authorization numbers of producers.</li> </ul>	<p>Unclear</p>	<p>990.3 (a) (1) (iii)</p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	<p>Revised. See Item 2 in VA Plan on page 1.</p>
<p><b>Plan for accurate and effective sampling and testing using post decarboxylation or similar reliable methods</b></p>				
<p><b>Sampling procedures for both all lots and performance-based sampling:</b></p>				
<p>Procedures for collecting samples from the flowering tops of plants which shall be approximately <b>five to eight inches</b> in length from the “main stem” (that includes the leaves and flowers), “terminal bud” (that occurs at the end of a stem), or “central cola” (cut stem that could develop into a bud).</p>	<p>Unclear</p>	<p>990.3 (a) (2) (ii)</p> <p><a href="#">Sampling Guidelines for Hemp</a></p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	<p>Revised. See Item 6 in VA plan on page 2.</p>
<p>Standard sampling and performance-based sampling procedures must be sufficient at a confidence level of 95 percent that no more than one percent</p>	<p>Yes</p>	<p>990.3 (a) (2) (iii) (A) and (B)</p>	<p>Pg. 2 – VDACS’s Hemp Plan</p>	



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of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot.		<a href="#">Sampling Guidelines for Hemp</a>		
<b>Performance-based sampling:</b>				
States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section. The alternative method must be part of the plan and may consider one or more of the following factors: (1) Seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe; (2) Whether the producer is conducting research on hemp; (3) Whether a producer has consistently produced compliant hemp plants over an extended period of time; and (4) Factors similar to those in this paragraph (a)(2)(iii)(B).	Insufficient	990.3 (a) (2) (iii) (A) and (B)  <a href="#">Sampling Guidelines for Hemp</a>	Pg. 2 – VDACS’s Hemp Plan	Revised. See Item 12 in VA Plan on page 3.
<b>Sampling all lots and sampling agents procedures:</b>				
Procedures to conduct sampling and testing within 30 days prior to the anticipated harvest date; samples must be collected by a sampling agent; producers may not collect samples from their own growing facilities.	Yes	990.3 (a) (2) (i)	Pg. 2 – VDACS’s Hemp Plan	
Procedure/requirement/allowance that the producer or an authorized representative of the producer shall be present at the growing site during sample collection if possible.	Yes	990.3 (a) (2) (iv)	Pg. 3 – VDACS’s Hemp Plan	
Procedures to allow sampling agency representatives to have complete and unrestricted access during business hours to all hemp and other cannabis plants and all land, buildings, etc. used for cultivation, handling, and storage.	Unclear	990.3 (a) (2) (v)	Pg. 2 – VDACS’s Hemp Plan	Revised. See Item 7 in VA Plan on page 2
Procedures to ensure that a producer does not harvest any cannabis prior to samples being taken.	Yes	990.3 (a) (2) (vi)	Pg. 3 – VDACS’s Hemp Plan	
Procedures to ensure sampling agents are trained using USDA, state, or tribal training and the information is maintained by the state or tribal government.	Yes	990.3 (a) (2) (vii)	Pg. 2 – VDACS’s Hemp Plan	



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Testing procedures:				
<p><b>Acceptable Hemp THC Level definition:</b> When a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans is when the <b>application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less.</b></p>	Insufficient	990.1	Pg. 4 – VDACS’s Hemp Plan	Revised. See Item 3 in VA Plan on page 4.
<p>Procedures to require testing for total delta-9 THC concentration. The procedures must require accurate identification of the acceptable hemp THC level. Testing methods must include but are not limited to:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Post decarboxylation or other similarly reliable method</li> <li><input checked="" type="checkbox"/> Consideration of potential conversion of delta-9 THCA into THC and test result measure total available THC (THC + THCA)</li> <li><input type="checkbox"/> Gas or liquid chromatography with detection</li> <li><input checked="" type="checkbox"/> Procedures to determine total THC concentration on a dry weight basis.</li> </ul>	No	990.3 (a) (3) <a href="#">Laboratory Testing Guidelines</a>	Pg. 4 – VDACS’s Hemp Plan	Revised. See Item 8 in VA Plan on page 5.
<p>Procedures to ensure the hemp plant material from one lot not be commingled with hemp plant material from other lots.</p>	Yes	990.3 (a) (3) (ii)	Pg. 4 – VDACS’s Hemp Plan	
<p>Procedures to require hemp testing laboratories to adhere to standards of performance for detecting THC concentration, including Measurement of Uncertainty (MU); <b>must use DEA registered labs after December 31, 2022.</b></p>	Yes	990.3 (a) (3) (iii) (A-H) and 990.25	Pg. 4 – VDASCS’s Hemp Plan Pg. 5 – VDACS’s Hemp Plan Pg. 9 – VDACS’s Hemp Plan	Revised. See Item 8 in VA Plan on page 5.
<p>Procedures requiring testing laboratories to report test results to USDA for determining compliance with this part.</p>	Yes	990.3 (a) (3) (iii) (H) (4)]	Pg. 9 – VDACS’s Hemp Plan	
<p><b>Plan for Disposal Procedures</b></p>				



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<ul style="list-style-type: none"> <li>Procedures for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.</li> <li>Procedures to notify USDA of non-compliant plants and disposal of those plants from the lot where representative samples were taken. Test results must be included.</li> </ul>		<p>990.3 (a) (6)</p> <p><a href="#">Remediation and Disposal Guidelines for Hemp Growing Facilities</a></p>	<p>Pg. 1 – VDACS’s Hemp Plan</p>	<p>Revised. See Item 7 in VA Plan on page 9.</p>
<b>Plan for Remediation Procedures</b>				
<p>Procedures to ensure effective disposal or remediation of plants produced in violation of part 990; only those successfully remediated crops will be allowed to enter the stream of commerce, and all other remaining non-compliant crops must then be disposed.</p>	<p>Yes</p>	<p>990 E. Disposal and Remediation of Non-Compliant Plants</p> <p>990 (a) (6) (i - iii)</p> <p><a href="#">Remediation and Disposal Guidelines for Hemp Growing Facilities</a></p>	<p>Pg. 1 – VDACS’s Hemp Plan</p> <p>VA Hemp Law requires destruction of plants that test greater than 0.6%.</p>	
<b>Plan for Inspection Procedures</b>				
<p>Procedure for conducting annual inspections of random sample of licensed producers to verify that hemp is not produced in violation of this part.</p>	<p>Unclear</p>	<p>990.3 (a) (7)</p>	<p>Pg. 2 – VDACS’s Hemp Plan</p>	<p>Revised. See Item 2 in VA Plan on page 9.</p>
<b>Plan for Collection of Information</b>				
<p>Procedure for submitting the information described in 990.70 to the Secretary not more than 30 days after the date on which the information is received.</p>	<p>Yes</p>	<p>990.3 (a) (8)</p>	<p>Pg. 9 – VDACS’s Hemp Plan</p>	
<p>Procedure for producers licensed under state and tribal government plans to share information with USDA, Agricultural Marketing Service (AMS), and Farm Service Agency (FSA) including:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Hemp crop acreage</li> <li><input checked="" type="checkbox"/> Reporting total acreage of hemp planted, harvested, and disposed or remediated</li> <li><input checked="" type="checkbox"/> License or authorization number</li> </ul>	<p>No,</p> <p>Missing to FSA, only acreage.</p> <p>Missing GPS.</p>	<p>990.3 (a) (10) (iii) and 990.7</p>	<p>Pg. 10 – VDACS’s Hemp Plan</p> <p>Pg. 15 – VDACS’s Hemp Plan</p>	<p>Revised grower registration application. See Appendix 1.</p>



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<input checked="" type="checkbox"/> Street address <input type="checkbox"/> Geospatial location(s) of each lot or greenhouse where hemp will be produced <input checked="" type="checkbox"/> Acreage of greenhouse or indoor square footage dedicated to the production of hemp				
<b>Plan to Comply with Enforcement Procedures</b>				
Procedures to contain provisions relating to negligent producer violations as defined under this part; producers shall not receive more than one negligent violation per growing season. Provides for corrective action plan for negligent violations: <ol style="list-style-type: none"> <li>1. Failure to provide legal description of land</li> <li>2. Failure to obtain a license</li> <li>3. Produces cannabis with THC exceeding 1.0 percent</li> </ol>	No	990.6 (b)	Pg. 5 – VDACS’s Hemp Plan	See Item 3 of VA Plan on page 7.
Procedures to provide for the correction of negligent violations: <ol style="list-style-type: none"> <li>1. A reasonable date to correct the violation</li> <li>2. Reporting requirements for 2 years from date of the negligent violation</li> <li>3. Violations are not subject to federal, state, tribal, or local government criminal enforcement action</li> <li>4. Provides that a negligent violation 3 times within a 5-year period is ineligible to produce hemp for a period of 5 years from the date of the 3<sup>rd</sup> violation</li> <li>5. State or tribal government shall conduct inspections to determine if corrective action plan has been implemented</li> </ol>	Yes	990.6 (c)	Pg. 5 – VDACS’s Hemp Plan	
Procedures for producer violations made with a culpable mental state greater than negligence: <ul style="list-style-type: none"> <li>• Producer shall be reported to the U.S. Attorney General and the chief law enforcement officer of the state or tribal government.</li> </ul>	Unclear	990.6 (d)	Pg. 1 – VDACS’s Hemp Plan	Revised. See Item 8 in VA Plan on page 7.





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<p>Procedures for addressing felonies:</p> <ul style="list-style-type: none"> <li>• Provides for a 10-year ineligibility restriction for persons with a State or Felony conviction relating to a controlled substance</li> <li>• Provides for controlled substance felony conviction exception for participants in a state hemp pilot program authorized under the 2014 Agricultural Act before December 20, 2018</li> <li>• Procedures for business entities to determine which participants are considered to be “key,” or have executive managerial control</li> </ul>	Yes	990.6 (e)	Pg. 6 – VDACS’s Hemp Plan Pg. 7 – VDACS’s Hemp Plan	
<p>Procedures stating that any persons who materially falsify any information in their application shall be deemed ineligible to participate in the program.</p>	Yes	990.6 (f)	Pg. 6 – VDACS’s Hemp Plan	
<p>Certification that the state or tribal government (whichever applicable) has resources and personnel to carry out required Farm Bill practices and procedures.</p>	Yes	990.3 (a) (9)	Pg. 9 – VDACS’s Hemp Plan	
<p>Plan may include other practices or procedures as long as consistent with this part and the Act. Plan may include requirements more stringent than this part or the Act.</p>		990.3 (a) (10) (b) (1) and (2)		
<p>Hemp Produced for Research (Individuals and Institutions):</p> <p>Plan outlines the following requirements:</p> <ul style="list-style-type: none"> <li>• Producers that produce hemp for research, along with the research institution itself, must obtain a license from a State or Tribal Government.</li> <li>• Hemp produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species</li> </ul>	Insufficient	990 C. Sampling for Total THC – Performance Based Sampling	Pg. 2 – VDACS’s Hemp Plan	Revised. See Item 12 in VA Plan on page 3.



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<p>Cannabis sativa L. that will be subject to this alternative method will not test above the acceptable hemp THC level.</p> <ul style="list-style-type: none"> <li>• Research institutions and producers growing hemp for research purposes shall ensure the disposal of all noncompliant plants.</li> <li>• Research institutions and producers growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of noncompliant plants.</li> <li>• Research institutions that handle “hot” hemp must follow CSA requirements for handling marijuana.</li> </ul>				
<p><b>NOTES:</b></p>				