Industrial Hemp Advisory Board Meeting
November 14, 2023

Performance Based Sampling ("PBS") - Discussion

For Reference USDA Language from Sampling Guidelines for Hemp U.S. Domestic Hemp Production Program Issued January 15, 2021

Performance-Based Sampling Protocols:

1. States and Tribes may develop performance-based sampling protocols.

2. Performance-based sampling protocols may consider seed certification processes, other process that identify varieties that have consistently resulted in compliant hemp plants, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors.

3. Performance-based sampling protocols may consider alternative requirements for operations that grow "immature" cannabis that does not reach the flowering stage. These facilities may grow seedlings, clones, microgreens, or other non-flowering cannabis, as determined by the State or Tribe.

4. A performance-based sampling protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level of 0.3 percent on a dry weight basis.

5. Regardless of the specific performance-based sampling requirements developed under a State or Tribal plan, all samples must be collected from the flowering tops of the plant by cutting the top five to eight inches 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) of the flowering top of the plant.

6. States and Tribes are required to include performance-based sampling protocols in the plan submitted to USDA for approval if they decide to use this methodology.

Purpose Statement

The purpose of performance-based sampling ("PBS") is to reduce preharvest sampling from every lot of hemp grown provided a confidence level of 95 percent that no more than one percent of the plants in each lot will exceed the acceptable hemp THC level. This reduces not only the burden on county Departments of Ag, Weights and Measures but also sampling and testing costs for registered hemp growers.

Potential Requirements for Performance Based Sampling

1. All licensees shall ensure that the seeds, clones and starts used to produce hemp are from cannabis varieties that meet the definition of hemp.
2. A lot of hemp shall only be eligible for PBS consideration if the licensee keeps and submits upon request documentation verifying the eligibility of their crop for PBS.
3. CDFA reserves the right to sample, and test any hemp lot at any time to ensure compliance with the acceptable hemp THC level.
4. County Departments of Ag Weights and Measures may conduct random inspections, including records review of licensees and whether or not they are subject to sampling and testing requirements.
5. The PBS method must have the potential to ensure, at a confidence level of 95 percent, that the subject crop that will be subject to PBS will not test above the acceptable hemp THC level. PBS may consider one or more of the following factors:
    a. "Immature" plants that do not reach the flowering stage. This may include seedlings, clones, microgreens, or other non-flowering cannabis
    b. Whether a given cultivar is a Cultivar in Good Standing
    c. Whether the producer is conducting research on hemp
        i. at an institution of higher learning or,
        ii. that is funded by a Federal, State, or Tribal government or,
        iii. that never enters the stream of commerce
    d. Whether a producer is a Grower in Good Standing
    e. Situations in which material obtained from a single source has been planted in non-contiguous areas as long as they are identified and tracked independently from other source materials.
    f. Other factors similar to those in this section and are acceptable to the Department
6. All registered lots not covered by a PBS protocol must be tested using the standard method

Immature Plants

1. Microgreens
2. Greens
3. Nursery Transplants (Clones)
4. Sprouts
5. Mother Plants

Other Plants

1. Fiber

2. Grain
3. Essential Oil (non-cannabinoid)

Cultivar in Good Standing

1. Certified Seed
2. Clone
3. Process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State

Grower in Good Standing

1. Whether a producer has consistently produced compliant hemp plants over an extended period of time

Research Institutions

1. Whether the producer is conducting research on hemp