



# Commonly Asked Questions About Performance-Based Sampling

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## What is Performance-based Sampling?

Performance-based Sampling (PBS) is an alternative method of sampling and testing of hemp that does not require every grower lot to be sampled. Instead of sampling and testing every lot, a State or Tribe may instead design metrics for sampling hemp that ensure only legal hemp is being grown under the program while minimizing the resource burdens of sampling each lot annually. To do this, States and Tribes must design a sampling regime that meets the confidence interval required by the Final Rule and include this design in their USDA-approved plan.

Performance-based Sampling can be used to carve out groups of growers to subject to less stringent sampling based on data for that group that shows they are unlikely to be a compliance risk to your program.

## Am I Required to Include a Performance-based Sampling Protocol in My State or Tribal Plan?

No. Many States and Tribes are continuing to use the standard sampling protocol of sampling every lot within 30 days of harvest. A plan may be amended or updated at any time, so those still creating Performance-based Sampling protocols or collecting data may choose to get a plan approved with standard sampling metrics included and then amend their plan in the future to include Performance-based Sampling protocols.

## What Does the Final Rule Say about Performance-based Sampling?

The Final Rule says, “A performance-based approach would simply set a performance objective (e.g., reliability of 95 percent) and allow the States and Indian Tribes considerable freedom in how to achieve that reliability objective with their sampling methodology... States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section.

*(A) The alternative method must be part of the State or Tribe’s hemp plan and is subject to USDA approval.*

*(B) The alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species Cannabis sativa L. that will be subject to the alternative method will not test above the acceptable hemp THC level. The alternative method 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).*

It is important to note that your sampling methods must be included as part of your Hemp Plan for USDA review and approval.

### **What is the Confidence Interval that Must be Met?**

The Final Rule says, “Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent 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.”

Due to the very specific nature of this requirement, USDA recommends States and Tribes desiring to use Performance-based Sampling protocols use the exact language from the Final Rule in their State or Tribal Plan and ensure that their Performance-based Sampling protocols will meet this threshold.

### **What are the Metrics a State or Tribe Could Use in a Performance-Based Protocol?**

The Final Rule allows States and Tribes the ability to determine which metrics might be appropriate for their region or jurisdiction to meet the confidence threshold described above. Some metrics specifically mentioned in the Final Rule are whether the grower is using certified hemp seed that has been shown to produce compliant hemp plants or that grower’s history of hemp production

indicates that they have not produced any non-compliant hemp over a long period of time. The Final Rule also allows States and Tribes to include other metrics that they feel can successfully meet the confidence level threshold. These metrics must be included in the State or Tribal Hemp Plan.

### **Can Performance-Based Metrics for Universities and Research Institutions be Different?**

Yes. State and Tribal Plans may include different Performance-based Sampling protocols for Universities and Research institutions. Some States and Tribes only allow Performance-based Sampling for hemp produced for research and use the standard sampling protocol for all other grower lots.

Performance-based Sampling protocols for researchers can be less stringent. The USDA understands that there are variations between research projects and creating “one size fits all” protocols for research is impractical. The USDA will evaluate Performance-based Sampling metrics for research institutions based on evidence provided in the State or Tribal plan that indicates that the university or research institution will be producing hemp in accordance with the Final Rule and that hemp produced for research will be disposed of at the end of the project and not enter the stream of commerce. Performance-based Sampling protocols for researchers must still be included in the State or Tribal plan.

### **What Data Do I Need to Provide to Show Performance-Based Metrics Will Meet the Confidence Level?**

The USDA will consider many different documents or types of data when determining if a State or Tribe’s Performance-Based metrics will meet the Confidence Level. Some examples include: data on compliance from a 2014 Farm Bill Pilot program from any State, data on compliance under the IFR or Final Rule, agronomic research produced by universities, or hemp varietal performance from other countries similarly situated to the United States. The USDA recognizes that there is limited research information available and will currently consider any documentation provided in good faith to support Performance-based Sampling protocols. Research data must be included with the Hemp Plan submission in order for Performance-based Sampling metrics to be approved as part of a Hemp Plan.

### **What Are Some Things to Consider When Producing Performance-based Sampling Metrics for a State or Tribal Plan?**

When considering how to create Performance-based Sampling metrics to be included in your State or Tribal plan, the first thing that should be considered is how you can be sure that your sampling strategy will meet the confidence threshold described above.

Other things to consider:

- What are the conditions in your State or Tribal jurisdiction? Will dry/wet, high-altitude, pest pressure, or other conditions impact the amount of non-compliant hemp being grown in your jurisdiction?
- How many lots you will sample in each group? (e.g. 75% of lots grown for fiber hemp.)
- How will you select the lots each group to be sampled?
- Will you have separate Performance-based Sampling Requirements for researchers and commercial growers?
- How has the certified seed produced in your region performed over a distinct period of time?
- How are certain varieties produced for specific end-uses performing in your region?
- How will random sampling complement your PBS sampling strategy?
- Should you require an unofficial compliance test upon harvest from all growers regardless of whether they are chosen for official sampling under your Performance-based Sampling metrics?
- How will you show compliance during a USDA audit?

### **Who Should I Contact with Performance-based Sampling Questions?**

[Visit the USDA Hemp Program Website:](#)

[Email the USDA Hemp Program](#)

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