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 0.3 percent 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.
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