

USDA Releases Highly Anticipated Interim Final Rule for Hemp Production

By Elizabeth B. Davis

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On October 29, 2019, The U.S. Department of Agriculture released its interim final rule for the domestic production of hemp, which provides hemp growers and related businesses much needed resolution regarding how the federal government plans to regulate hemp and hemp products.

The 2018 Farm Bill directed the USDA to establish a national regulatory framework for hemp production, and the USDA established the U.S. Domestic Hemp Production Program through an interim final rule. Under the interim rule, states and Native American tribes can submit their own proposed plans for regulating hemp production. The rule also establishes a federal plan for producers in states or Native American territories that do not have their own USDA-approved plan.

As is common with state programs under a federal mantle, plans submitted by states and Native American tribes may be more restrictive than the federal plan. The USDA will have 60 days to review and approve submitted plans. The interim final rule is scheduled to sunset in two years.

The production plans must include:

- (i) a method for testing to ensure the hemp is below the legal limit for tetrahydrocannabinol (THC), the compound that gives marijuana users a high;
- (ii) a process for keeping up-to-date records on the land where hemp is produced;
- (iii) steps for disposing of plants; and
- (iv) licensing requirements for hemp farmers.

Hemp grown legally under an approved program may be transported nationally. States and Native American tribes may no longer prohibit interstate transport for hemp grown in compliance with the program. This clarification allows farmers and producers access to nationwide markets they might not have otherwise been able to enter. Additional areas of uncertainty, including financing and crop insurance, now have greater clarity based on the interim rule requirements.

Consistent with the statutory definition, the interim rule defines hemp as cannabis with less than 0.3% concentration of THC. At the same time, it recognizes potential ranges of uncertainty in methods used to test the plant and makes regulatory allowances for them.

Although the 2018 Farm Bill legalized nonpsychoactive hemp a year ago, the crop and the industry it supports have desperately needed a comprehensive regulatory framework. The patchwork of inconsistent state regulations resulted in uncertainty for manufacturers, distributors, and retailers,

who faced various business risks, including having interstate hemp shipments seized. The interim rule creates an opportunity for predictability and growth.

The complete interim rule is available [here](#).

For further information on the U.S. Domestic Hemp Production Program and related issues, please contact a member of Burr's [Cannabis and Hemp Team](#).

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