



Information Alert

State-Federal Relations Division

USDA Issues Final Rule Regulating Hemp Production

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On Jan. 19, the United States Department of Agriculture (USDA) [issued its final rule](#) implementing the legalization of hemp production from the 2018 Farm Bill. This rule is a follow up to Interim Final Rule (IFR), read NCSL's [Info Alert here](#), the agency issued in October 2019. Though the new final rule does make some changes to the IFR to provide hemp producers with additional flexibilities, including a few which were requested by NCSL, it does leave in place the requirement that hemp must be tested at a facility licensed by the Drug Enforcement Administration.

The 2014 Farm Bill legalized the production of hemp without the need for a permit from the Drug Enforcement Administration (DEA) though only if a state had implemented its own hemp research pilot program. The 2018 rule expanded on this legalization by allowing state programs to expand beyond research pilot programs, establishing a national cultivation program at USDA as well as legalizing hemp in interstate commerce. This final rule will go into effect March 22 though it is unclear how the incoming administration may change or pause the rule given its release just prior to President Joe Biden taking office.

Significant changes in the new final rule include an increase in the sampling testing window from 15 days to 30 days, due to “the logistical challenges” for regulatory agencies collecting samples and producers harvesting crops in such a short time frame. The rule also provides flexibility with sampling protocols, instead of requiring sampling from every single lot. For those plants deemed non-compliant plants (hot hemp) that have more THC than is legally allowed, the final rule gives producers options other than solely having to destroy the crop, including “composting into ‘green manure’ for use on the same land, tilling, disking, burial, or burning.” Further, producers can dispose of portions of the plant with higher concentrations, allowing for beneficial use for the remaining portion.

The final rule also allows for remediating hot hemp in hopes of minimizing the financial risk for farmers having to destroy entire hemp crops. Remediation techniques allowed include disposing of hemp flowers—where THC concentrations are the highest—and using the remainder of the plant for other purposes. Producers could also blend the entire plant to use as biomass. The final rule increases the negligence threshold from 0.5% percent to 1% THC with USDA acknowledging that farmers may attempt to ensure compliance at all steps yet still grow a crop

that tests above the 0.3% limit. However, the rule does limit the number of times a grower can exceed the threshold before being forced to suspend production—three violations over a period of five years would result in being barred from producing hemp for five years though the rule limits negligence violations to one violation per calendar year.

Those aspects of the IFR that will remain in place include the requirement for testing at DEA approved facilities due to the possibility that cannabis testing above 0.3% THC would be, by definition, marijuana. However, USDA is delaying enforcement until Dec. 31, 2022 because the agency “is aware that there are still not enough DEA-registered hemp testing facilities.”

Outside of USDA’s jurisdiction, the Food and Drug Administration has yet to issue regulations for [hemp-derived CBD products](#). The agency has publicly stated it needs more long-term data on the health effects of CBD before developing regulations for the consumer market.

For more information on this rule or state hemp programs contact NCSL staff Ben Husch (ben.husch@ncsl.org) or Mindy Bridges (mindy.bridges@ncsl.org)