



Information Alert

State-Federal Relations Division

USDA Issues Key Legal Opinion Concerning Hemp Production and Transportation

May 31, 2019

On May 28, the United States Department of Agriculture (USDA) [published](#) an updated opinion from USDA's Office of General Counsel (OGC). The opinion focuses on a number of questions regarding hemp production and transportation following the enactment of the [2018 Farm Bill](#), which authorized the production of hemp and removed hemp and hemp seeds from the Drug Enforcement Administration's schedule of Controlled Substances. The OGC opinion contained four major points:

1. "As of the enactment of the 2018 Farm Bill on December 20, 2018, hemp has been removed from schedule I of the Controlled Substances Act and is no longer a controlled substance.
2. "After USDA publishes regulations implementing the new hemp production provisions of the 2018 Farm Bill, states and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under a state or tribal plan or under a license issued under the USDA plan.
3. "States and Indian tribes also may not prohibit the interstate transportation or shipment of hemp lawfully produced under the 2014 Farm Bill.
4. "A person with a state or federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under the Agricultural Marketing Act of 1946. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date."

It is not clear when USDA will issue new regulations regarding industrial hemp production, although they are expected in 2019. Further, there remains several questions regarding cannabidiol (CBD), which is regulated by the Food and Drug Administration (FDA). FDA told members of Congress it needs at least a year to implement federal rules that reflected the compounds safety and effectiveness, as a medical product or an additive for foods. This delay comes as a number of states have passed legislation regarding CBD.

More information on state hemp legislation can be found [here](#), or read the full legal opinion from USDA OGC [here](#). For questions relating to hemp, please contact NCSL staff, [Ben Husch](#) and [Mindy Bridges](#).