



NATIONAL CONFERENCE OF STATE LEGISLATURES

Information Alert

State-Federal Relations Division

USDA Issues Rules on National Hemp Program

Oct. 31, 2019

On Tuesday, Oct. 29, the United States Department of Agriculture (USDA) announced it was issuing [an interim final rule](#) outlining a federal program for growing hemp, following its legalization in the [2018 farm bill](#). In just the past year, hemp production has already risen from 120,000 acres to more than 500,000 acres. As an interim final rule, it will go into effect immediately upon publication in the Federal Register. USDA Undersecretary for Agriculture Marketing and Regulatory Service Greg Ibach noted the agency will accept public comments and issue a final rule after the 2020 crop season, so that the experience of farmers and regulators in the first year of production can be taken into consideration. The proposed rule focuses on a number of areas including testing, crop destruction, seeds, interstate transportation, and data collection. The rule was eagerly anticipated by farmers, producers and retailers worried that because hemp and marijuana are the same plant, *Cannabis sativa L.*, that without federal rules, hemp's full potential would not be realized.

State Impact

USDA will review and issue a decision within 60 days on plans submitted by a state to the agency with the goal of providing states enough time to implement their plan before the 2020 hemp season. For those states that already submitted, Undersecretary Ibach noted that "States hopefully will take the opportunity to review their plans against the USDA rules and regulations and make any adjustments they need to," and that states that already submitted hemp proposals should "re-affirm" them.

Testing

As part of the farm bill passed last year, *tetrahydrocannabinol* (THC) levels in hemp cannot rise above 0.3 percent. However, the proposed rule would allow for a margin of error so a plant that tests slightly above could still be approved. The proposed rule did not include a uniform testing standard, meaning that in those states where a standard has been established, the state standard will continue. THC levels must be sampled 15 days before harvest in a Drug Enforcement Administration-approved laboratory and come only from the plant's flowers.

Seeds

Several states have developed their own seed certification program following the 2014 farm bill that allowed states to establish hemp pilot and research programs. The rule acknowledges that varying weather conditions can have an impact on seeds, “the same seed used in one state to produce hemp plants with THC concentrations less than 0.3% can produce hemp plants with THC concentrations of more than 0.3% when planted in a different state.” As such, USDA did not include a federal seed certification program.

Interstate Transportation

The rule reemphasizes a [USDA ruling](#) earlier this year that interstate transportation is fully legal, even if the shipment travels through a state that does allow the growing of hemp.

Data Collection

USDA acknowledged that licensed producers will have to report crop production levels to the Farm Service Agency which will maintain records of hemp production.

Crop Destruction

If a plant tests above 0.3% THC limit, the crop would have to be collected for destruction by an authorized official to handle what would technically be marijuana, a federal schedule 1 drug. Crops would not be available for other uses such as composting.

Related Action

Additionally, USDA’s Risk Management Agency [announced last month](#) that hemp crop insurance will be available for the 2020 season. The insurance, which will be available through the Whole-Farm Revenue Protection program, will initially cover certain hemp grown for fiber, flower, or seeds, although USDA anticipates providing additional coverage options in the future. The National Credit Union Administration also recently released [interim guidance](#) for federally insured credit unions that provide financial services to hemp-related businesses.

For more information or questions on the rule please contact NCSL staff Ben Husch (ben.husch@ncsl.org) or Kristen Hildreth (kristen.hildreth@ncsl.org)

Key Links

- [USDA Homepage on Hemp Production](#)
- [Draft of Interim Final Rule \(pdf\)](#)
- [Guidelines for Sampling \(pdf\)](#)
- [Guidelines for Testing \(pdf\)](#)
- [Legal Opinion on Authorities for Hemp Production and Transportation](#)
- [Importation of Hemp Seeds](#)