

On October 31, the US Department of Agriculture (USDA) published an interim final rule to establish the Domestic Hemp Production Program.

This program, as required by the 2018 Farm Bill, attempts to clarify the regulatory framework for individuals hoping to capitalize on the production and sale of domestic hemp.

The interim final rule requires states to submit a hemp plan for USDA approval and establishes THC testing protocols, legal protection for interstate commerce of hemp, licensing protocols and eligibility rules for federal programs, such as loan and crop insurance programs.

Testing for THC

The 2018 Farm Bill legalized the cultivation of hemp containing no more than 0.3% of THC on a dry weight basis. The rule requires THC-content sampling 15 days prior to harvest, and USDA reserves the right to randomly sample hemp production. Acknowledging that farmers may unintentionally produce plants exceeding the 0.3% thresholds, the rule establishes a Measurement of Uncertainty exception and a process for disposing of non-compliant plants.

USDA issued guidelines for sampling and testing procedures concurrently with this rule. However, it did not establish uniform testing standards or seed certification programs – allowing existing and proposed state regulations to govern hemp production. Sampling in all jurisdictions must be tested at a Drug Enforcement Administration-registered lab.

Interstate Commerce

The interim final rule makes clear that interstate transportation of hemp is allowed, even if the transportation passes through a state that forbids hemp cultivation.

Importing and Exporting

USDA's Animal and Plant Health Inspection Service will continue to have jurisdiction over imported hemp seeds. For importation of seeds, the rule restates the requirement for a phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests have been detected. An additional Federal Seed Analysis Certificate is required for seeds grown in Canada.

The rule does not address hemp exportation but leaves open such an opportunity should sufficient interest develop.

Approval of State and Tribal Hemp Plans

Once a state formally submits a plan, USDA will have 60 days to review it. USDA may approve plans that comply with the rule or establish more stringent requirements. If USDA rejects a state plan, a State or Tribal government may submit an amended plan or file a request for reconsideration.

The rule also establishes a USDA plan to regulate hemp production for producers in areas where hemp production is not covered by an approved State or Tribal plan. Jurisdictions or producers that apply to cultivate hemp under USDA's guidelines, rather than under a state hemp plan, will be reviewed within 30 days of submission. USDA will allow hemp pilot projects operating under the 2014 Farm Bill to continue through the 2020 planting season.

Production Compliance

Hemp producers are required to submit an acreage report to USDA's Farm Service Agency (FSA). The rule states that this report establishes a nationwide identification system, as required by the 2018 Farm Bill. The rule allows states to require additional reporting requirements; however, the acreage report to FSA is the minimum standard.

Food and Drug Administration (FDA) Jurisdiction

While this rule is a significant initial step, it does not clear up uncertainties regarding the sale of products containing the hemp-derived compound cannabidiol (CBD). The FDA will continue to regulate ingestible and topical hemp products, including CBD. The rule does not change the Federal Food, Drug, and Cosmetic Act and will not automatically allow hemp-derived CBD to be sold in any form.

The rule does not address testing for contaminants, such as pesticides. The rule also maintains the ban on persons with felony drug convictions within the past 10 years from participating in the hemp production industry. The rule requests specific public feedback on sampling, testing, and lab procedures.

This rule is effective October 31, 2019 through November 1, 2021. USDA will consider comments during a 60-day public comment period, ending December 30, 2019.

The Interim Final Rule can be found [here](#).

Guidelines for Sampling, Testing, and Laboratory Test Results can be found [here](#).

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