

On January 29, 2020, the comment period closed for the US Department of Agriculture (USDA) [interim final rule](#), published on October 31, 2019, to establish the Domestic Hemp Production Program.

The comment period, which the USDA extended by 30 days, received over 4,000 comments from interested parties, including states, tribal governments and hemp industry participants. Public comments questioned various facets of the rule, most notably the requirement that every hemp plot be sampled 15 days prior to the anticipated harvest, the creation of a “negligence threshold” for products that contain 0.5% delta-9 tetrahydrocannabinol (THC) or higher and unclear guidelines for the destruction of noncompliant plants.¹

Throughout the public comment period, the USDA approved hemp production plans on a rolling basis. States and tribal governments that did not receive approval were asked to amend their applications. Due to complexities and time constraints, some states, such as Wisconsin, Kentucky and Minnesota, are expected to revise their hemp production plans, but operate during the 2020 growing season under the pilot program established by authority in the 2014 Farm Bill.

The Domestic Hemp Production Program attempts to balance the autonomy of the states and tribal governments with the necessity to create a federal framework for the regulation of hemp production. The interim final rule requires states and tribal governments to submit a hemp production plan for USDA approval and establishes sampling and testing protocols, legal protection for interstate commerce of hemp, licensing protocols and eligibility rules for federal programs, such as loan and crop insurance programs. Additional analysis about the Interim Final Rule can be found [here](#) and the 2018 Farm Bill [here](#).

USDA's table below² summarizes the submission and approval status of state and tribal hemp production plans as of March 11, 2020. Twenty-three tribal governments and states have approved plans.

Tribes	
Plan	Status
Blackfeet Nation Tribal Council	Under review
Cayuga	Under review
Cheyenne and Arapaho Tribe	Under review
Cheyenne River Sioux	Under review
Colorado River Indian Tribes	Approved Plan (pdf)
Eastern Tribe of Cherokee Indians	Under review
Flandreau Santee Sioux	Approved Plan (pdf)
Fort Belknap Indian Community	Approved Plan (pdf)
Iowa Tribe of Kansas and Nebraska	Approved Plan (pdf)
La Jolla Band of Luiseno Indians	Approved Plan (pdf)
Miccosukee Tribe of Indians of Florida	Under review
Navajo Nation San Juan River farm	Pending resubmission

¹ See, National Association of State Departments of Agriculture (NASDA) public comment: <https://www.nasda.org/letters-comments-testimony/nasda-comments-on-usda-interim-final-hemp-rule>.

² United States Department of Agriculture, Status of State and Tribal Hemp Production Plans for USDA Approval (as of March 11, 2020) available: <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>.

Tribes

Plan	Status
Oglala Sioux Tribe	Under review
Otoe-Missouria Tribe	Approved Plan (pdf)
Pala Band of Mission Indians	Under review
Pawnee Nation of Oklahoma	Under review
Prairie Band Potawatomi Nation	Approved Plan (pdf)
Pueblo of Picuris Tribe	Approved Plan (pdf)
Sac & Fox Tribe of the Mississippi in Iowa	Under review
Saint Regis Mohawk Tribe	Drafting a plan for USDA review
Santa Rosa Band of Cahuilla Indians	Approved Plan (pdf)
Santee Sioux Nation	Approved Plan (pdf)
Seneca Nation	Under review
Sisseton-Wahpeton Oyate	Approved Plan (pdf)
Standing Rock Santee Sioux	Under review
Turtle Mt. Band of Chippewa Indians	Under review
Ute Mountain Ute	Drafting a plan for USDA review
Waganakising Odawak	Under review
Warm Springs Tribe	Under review
Winnebago Tribe of Nebraska	Under review
Yankton Sioux Tribe	Drafting a plan for USDA review
Yurok Tribe	Approved Plan (pdf)

States

Plan	Status
Alabama	Will continue to operate under 2014 pilot
Alaska	Will continue to operate under 2014 pilot
Arizona	Under review
Arkansas	Will continue to operate under 2014 pilot
California	Drafting a plan for USDA review
Colorado	Will continue to operate under 2014 pilot
Connecticut	Pending resubmission
Delaware	Approved Plan (pdf)

States

Plan	Status
Florida	Drafting a plan for USDA review
Georgia	Approved Plan (pdf)
Hawaii	Drafting a plan for USDA review
Illinois	Drafting a plan for USDA review
Indiana	Under review
Iowa	Under review
Kansas	Under review
Kentucky	Will continue to operate under the 2014 pilot
Louisiana	Approved Plan (pdf)
Maine	Will continue to operate under the 2014 pilot
Maryland	Will continue to operate under the 2014 pilot
Massachusetts	Drafting a plan for USDA review
Minnesota	Will continue to operate under the 2014 pilot
Missouri	Will continue to operate under the 2014 pilot
Montana	Approved Plan (pdf)
Nevada	Drafting a plan for USDA review
Nebraska	Approved Plan (pdf)
New Hampshire	USDA Hemp Producer License
New Jersey	Approved Plan (pdf)
New Mexico	Will continue to operate under the 2014 pilot
North Carolina	Will continue to operate under the 2014 pilot
North Dakota	Will continue to operate under the 2014 pilot
Ohio	Approved Plan (pdf)
Oklahoma	Drafting a plan for USDA review
Oregon	Will continue to operate under the 2014 pilot
Pennsylvania	Approved Plan (pdf)
South Carolina	Under review
Tennessee	Pending resubmission
Texas	Approved Plan (pdf)
U.S. Virgin Islands	Drafting a plan for USDA review
Utah	Will continue to operate under the 2014 pilot

States

Plan	Status
Vermont	Will continue to operate under the 2014 pilot
Virginia	Will continue to operate under the 2014 pilot
Washington	Approved Plan (pdf)
West Virginia	Under review
Wisconsin	Will continue to operate under the 2014 pilot
Wyoming	Approved Plan (pdf)

If you have any questions or would like assistance with issues related to the USDA's Hemp Production Program, please contact your usual firm lawyer, or one of the authors of this client alert.

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