

Practice Update

USDA Releases Hemp Rules

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On October 29, 2019, the Agricultural Marketing Service of the United States Department of Agriculture (USDA) released the text of its much anticipated interim final rule for regulations establishing a domestic hemp production program as required by the Agricultural Improvement Act of 2018 (also known as the 2018 Farm Bill). Since this is an interim final rule, it will be in effect immediately upon being published in the Federal Register and will remain in effect for two years, at which time it will be replaced by a final rule. The rule allows for States and Indian tribes wishing to have primary authority over hemp production to submit program plans to the USDA, and also establishes a federal plan for hemp producers in States or territories of Indian tribes that do not have their own approved hemp production plan.

The rule sets forth minimum standards for plans with respect to monitoring and production of hemp. Also included are stringent provisions for the reporting of land use and hemp crop acreage, procedures for sampling and testing hemp, establishment of procedures for disposal of hemp that exceeds acceptable hemp THC levels, and procedures for violations of the rule. While the rule does not change the requirement that hemp contain no more than 0.3% THC on a dry weight basis for federal civil proceedings and prosecution purposes, it is recognized that there will be some uncertainty in test results of THC levels, and rules for

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determining the measurement of uncertainty and determination of acceptable THC levels have been established. If hemp tests outside of these acceptable limits, it will be considered marijuana, a Schedule 1 substance, and must be destroyed in accordance with the federal Controlled Substances Act and Drug Enforcement Administration regulations. Inasmuch as testing laboratories may potentially handle Schedule 1 substances in the event that a hemp crop tests “hot,” all laboratories performing hemp testing must be registered with the USDA.

The rule does not provide for federal hemp seed certification, as seeds grown in different geographical locations do not grow uniformly, and produce varied levels of THC, compounded with the difficulty of determining the origin of seeds already in production. The rule also does not address hemp in food products, as the 2018 Farm Bill explicitly preserved authority over regulation of such products to the U.S. Food and Drug Administration.

Once the State and tribal plans are in place, hemp producers will become eligible for numerous agricultural programs, such as crop insurance coverage, federal farm loans, and conservation programs. The interim final rule goes into effect immediately, with an open public comment period running until December 30, 2019. After reviewing comments and obtaining additional information gathered in the interim period, the USDA will then draft and publish a final rule within two years. Interested persons may submit written comments on the new rules to the USDA. Should you desire additional information on the new rules or desire guidance on submitting a comment, need additional information, we welcome you to contact us.

Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain

circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

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