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2018 Farm Bill – U.S. Domestic Production of Hemp

If you've ever wondered what the hubbub is about hemp, you're not alone. Much confusion exists regarding hemp, which is the plant *cannabis sativa L.* that was commonly used to make textiles, dating back hundreds of years. Hemp's popularity waned some years ago, as cheaper alternatives and newer technologies caused a dramatic decline in hemp production. With the passage of the Controlled Substances Act (CSA) in 1970 all parts of the *cannabis sativa L.* plant became *plantae non grata* and the domestic production of hemp was prohibited.

However, as of late, hemp production has seen a resurgence. This resurgence wasn't fueled by a desire to produce textiles like rope or cloth as was done in the past, but a desire to produce CBD. While CBD can be produced from either marijuana or hemp, the variety derived from hemp is presumed to be legal nationwide thanks to the Agriculture Improvement Act of 2018 (2018 Farm Bill).

Under federal law *cannabis sativa L.*, is designated as "hemp" if it contains 0.3% THC or less and is designated as "marijuana" if it contains more than 0.3% THC. THC is short for "tetrahydrocannabinol", and it is the principal psychoactive substance in *cannabis sativa L.* and is the substance primarily responsible for the euphoria or "high" felt by users.

As you'll recall, the 2018 Farm Bill removed *cannabis sativa L.* plants with 0.3% or less THC (aka hemp) from the definition of "marijuana" in the Controlled Substances Act, and granted regulatory authority of domestic hemp to state departments of agriculture and the USDA.

Pursuant to the 2018 Farm Bill, on October 31, 2019, the USDA published an interim final rule specifying the regulations for growers to produce hemp. As an interim final rule, it is effective immediately, although

there will be a comment period that runs through December 30, 2019 for any who wish to comment on the rule. The text of the interim rule states that it will be effective for two years and then be replaced with a final rule, which will incorporate any changes, including those based on the comments received during the 60-day comment period.

For states that want to exercise primary regulatory authority over the production of hemp in their state, they must submit a plan that conforms to the interim final rule requirements to the USDA for approval. If states do not wish to establish plans for the monitoring and regulation of hemp, the USDA has also included in the interim final rule a regulatory framework for monitoring and regulation of hemp in those states. So, growers in all states will have the opportunity to participate in the hemp marketplace, regardless of whether each individual state decides to regulate the activity.

The interim final rule requires that state plans 1) identify the number of acres and require a legal description and geospatial location of where the hemp will be grown, 2) incorporate procedures for sampling and testing hemp plants to ensure THC levels, are at or below 0.3%, 3) include procedures for disposing of any hemp plants with THC above 0.3% (which would be considered marijuana) in accordance with federal standards, 4) include procedures to ensure compliance with the interim final rule, 5) contain procedures for reporting information to the USDA, and 6) certify that the state has the resources and personnel to carry out the program.

The USDA plan is similar to the state plan, except that instead of identifying the property on which the hemp will be grown, the USDA will issue hemp producer licenses.

[For the full text of the interim final rule, click here.](#)