

Federal Hemp Legalization: 2018 Federal Farm Bill and Agency Regulation of Hemp



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Federal Hemp Legalization

Hemp Farming Act of 2018

(S. 2667)

(McConnell, Wyden, Paul, Merkley)



Agriculture Improvement Act of 2018

(S. 3042; Substitute Amendment to H.R. 2)

Signed into Law December 20, 2018

Agriculture Improvement Act of 2018

(Pub L. No. 115-334)

1. Established Hemp as an Agricultural Commodity Regulated by USDA
2. State Department of Agriculture or Tribal Government Primary Regulatory Authority through Secretary of Agriculture Approved State/Tribal Plans
3. Enforcement Actions for Violations based on Mental State
4. Hemp Research
5. Crop Insurance

Acts Amended for Hemp Legalization

- Agricultural Marketing Act of 1946
- National Agricultural Research, Extension, and Teaching Policy Act of 1977
- Critical Agricultural Materials Act
- Federal Crop Insurance Act
- Agricultural Act of 2014
- Controlled Substances Act

Sec. 10113. Hemp production

Nothing in these Sections shall affect or modify:

- Federal Food, Drug, and Cosmetic Act;
- Public Health Service Act (Sec 351); or
- The authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services

Sec 7605. Legitimacy of Industrial Hemp Research

- USDA Study of Agricultural Pilot Programs
- 1 Year from the effective Date of USDA PLAN, Section 7606 of the Agricultural Act of 2014 is Repealed

Sec. 10113. Hemp production

Sec. 297A.

HEMP.—The term ‘hemp’ means the plant *Cannabis sativa* L. and *any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not*, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT

- The Controlled Substances Act is amended—

The term ‘marihuana’ does not include— hemp,
as defined in section 297A of the Agricultural
Marketing Act of 1946

SEC. 12619.

CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT

- Schedule I, of the Controlled Substances Act is amended

“Tetrahydrocannabinols” – except for
tetrahydrocannabinols in hemp (as defined under section
297A of the Agricultural Marketing Act of 1946)

TITLE X—Horticulture

Sec. 10113. Hemp production.

- Amends the Agricultural Marketing Act of 1946– includes Subtitle G—Hemp Production
- Allows states and tribes to regulate hemp production, based on a State or Tribal Plan
- Requires states and tribes without USDA approved plans to follow federal laws and regulations promulgated by USDA on hemp production

TITLE X—Horticulture

Sec. 10113. Hemp production

Sec 297B: STATE AND TRIBAL PLANS

- To have *primary regulatory authority* over the production of hemp in the State or territory of the Indian tribe
- State department of agriculture to *work in consultation with* the Governor and chief law enforcement officer of the State
- To monitor and regulate production

Sec. 10113. Hemp production

STATE AND TRIBAL PLANS

- Information on locations of hemp production,
- Testing for THC concentration,
- Disposal of plants that are out of compliance and products derived from those plants,
- Annual Inspections, and
- Enforcement of negligent or other violations of the Plan

May include any other practice or procedure to the extent that it is consistent

60 Days for Approval Upon Submission

SEC. 10114.
RULE OF CONSTRUCTION &
TRANSPORTATION OF HEMP AND
HEMP PRODUCTS

- Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp or hemp products.
- No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products ... through the State or the territory of the Indian Tribe.

Sec. 10113. Hemp production

OTHER VIOLATIONS

- Any person convicted of a felony relating to a controlled substance under State or Federal law within the past 10 years shall be ineligible—
 - to participate in the program and
 - to produce hemp

Exemption:

- Does NOT apply to any person growing hemp lawfully with a license, registration, or authorization under a Sec 7606 pilot program

Sec. 10113. Hemp production

Sec 297C: DEPARTMENT OF AGRICULTURE PLAN

- In a State or Indian tribe for which a State or Tribal plan is not approved, it is *unlawful to produce hemp* in that State or the territory of that Indian tribe *without a license issued by the Secretary*
- Production of Hemp without a license by the Secretary reported to Attorney General

Sec. 10113. Hemp production

DEPARTMENT OF AGRICULTURE PLAN

- Information on locations of hemp production,
- Testing for THC concentration,
- Disposal of plants that are out of compliance and products derived from those plants,
- Annual Inspections, and
- Enforcement of negligent or other violations of the Plan

May include any other practice or procedure to the extent that it is consistent

USDA Office of General Counsel Opinion

May 31, 2019

- Hemp and THC in hemp were removed from the Controlled Substances Act upon enactment of the 2018 Farm Bill
- One year after USDA finalizes rules, the industrial hemp pilot program authority in the Agricultural Act of 2014 (2014 Farm Bill) is repealed
- Amendments to the Agricultural Marketing Act of 1946 allow States and Indian Tribes to regulate hemp production or follow the USDA plan regulating hemp production
- States and Indian Tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under either the 2014 Farm Bill or the 2018 Farm Bill

USDA Implementation

Questions?

Contact

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