USDA releases rules for hemp

The U.S. Department of Agriculture (USDA) released rules to establish domestic hemp production last week.

States and potential hemp growers have been waiting for these rules since the Farm Bill legalized hemp back in December 2018, but required that regulatory programs be established for overseeing hemp production.

The rules set up the regulatory framework for state departments of agriculture, Indian tribal governments, and the USDA to license producers who want to grow hemp as a commodity crop.

The following discussion is a quick summary of the parts that affect Ohio, provided by Peggy Hall and Ellen Essman from the Ohio State University Extension law group.

A state must include the following in a hemp production plan that the USDA must approve before the state can allow hemp production within its borders:

- Plans to maintain relevant producer and land information.
- Plans to collect, maintain and provide USDA with contact and location information for each licensed hemp producer, including personal information about the individual or business, and location information about the land where hemp is produced.
- Plans for accurate and effective sampling and testing. A plan must include procedures for collecting hemp flower samples; conducting sampling and testing of plants 15 days prior to any harvest; ensuring that sampling methods are reliable and represent a homogenous composition of the sampling area; and prevent commingling of plants from different sampling areas.
- Procedures to accurately test THC levels in samples. The rules lay out suggested reliable testing methods, but do not establish a single, national testing procedure for determining whether a hemp plant falls below the 0.3 threshold for tetrahydrocannabinol (THC), the psychoactive ingredient that distinguishes hemp from marijuana.

However, a state must use a testing lab that is registered with the Drug Enforcement Agency and must require the lab to follow testing performance standards. The standards must include evaluation of "measurement of uncertainty," a concept similar to determining the margin of error, and must account for the uncertainty in the THC test.
- Procedures for disposal of non-compliant plants. A state plan must prohibit any handling, processing, or entering the stream of commerce of any hemp grown in an area that exceeds the acceptable THC level, and must have procedures for disposing of the plants, verifying disposal, and notifying USDA of non-compliant plants, including provision of test results to USDA.

- Inspection procedures. A plan must include procedures for annual inspections of random samples of licensed producers.
- Reporting procedures. A plan must explain how a state will submit all of the information and reports required by the rules, which include monthly producer reports, monthly hemp disposal reports, and annual reports of total planted, harvested, and disposed acreage. Acreage must be reported to the Farm Service Agency.
- Corrective action plans. A required corrective action plan will address procedures for allowing producers to correct negligent regulatory violations such as failing to provide a legal description, failing to obtain a license, and exceeding the THC level.

The procedures must include a reasonable compliance date, reporting by the producer for two years after a violation, five years of ineligibility for producers with three negligence violations within a five-year period, and inspections to ensure implementation of corrective action plans.
- Enforcement for culpable violations. A plan must have procedures for reporting any intentional, knowing, willful or reckless violations made by producers to the U.S. attorney general and chief law enforcement officers of the state.
- Procedures for addressing felonies and false information. The plan must not allow a producer with a felony conviction relating to controlled substances to be eligible for a hemp license for a period of 10 years from the felony conviction, and must prohibit a producer who materially falsifies information on an application to be allowed a license.
- Plan review by USDA. The rule states that after a state submits a hemp plan, USDA has 60 days to approve or deny the plan. The rule also allows USDA to audit approved state plans at least every three years.
- Interstate commerce of hemp. The rule reiterates an important provision first mentioned in the 2018 Farm Bill: that no state can prohibit transportation of hemp or hemp products lawfully produced under an approved state plan or a USDA license.

Ohio is in the process of developing its rules for hemp production, which should be in place sometime in 2020. However, it may be several years before a producer may plant a field of hemp in northwestern Ohio.

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