

PUBLICATION

USDA Unveils New Federal Hemp Production Rules

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The United States hemp/CBD industry reached another milestone this week, as long-awaited federal rules were issued governing hemp production. On Tuesday, October 29, the Agricultural Marketing Service of the United States Department of Agriculture (USDA) unveiled rules outlining USDA's much-anticipated plans for establishing a federal domestic hemp production program. Up until now, hemp production was primarily governed by a patchwork of state laws and pilot programs without a much-needed federal overlay of rules and benchmark standards to coordinate the legal production and transportation of hemp. The guidelines are designed to help expand legal production and sale of domestic hemp and hemp products, providing much-needed clarity to an already hazy legal cannabis market.

The USDA rules came in response to passage of the Federal Agricultural Improvement Act of 2018, commonly referred to as the Farm Bill, that was signed into law last December. Among other things, the Farm Bill required USDA to promulgate regulations and guidelines to establish and administer a program for the domestic production of hemp in the United States. USDA's newly announced rules outline the department's framework for approving plans to be submitted by the states (and Indian Tribes). The rules also establish a federal plan for producers in states that do not have their own USDA-approved hemp plan. USDA's new program includes requirements for maintaining information on the land where hemp is produced, THC testing requirements, regulations for disposing of non-conforming hemp plants, licensing requirements, and provisions to ensure compliance with the requirements of USDA's new rule.

Under this program, any state desiring to have primary regulatory authority over the production of hemp within its jurisdiction must submit, for the approval of the USDA Secretary, a plan concerning the monitoring and regulation of such hemp production. The states' plans must minimally conform to the requirements set forth in USDA's new rules, which are in turn guided by the Farm Bill. Several states across the country have been busy since passage of the Farm Bill developing their own state hemp plans for submission and approval by USDA. It is expected that several states will begin submitting their hemp plans for USDA approval in the near term. For states that do not submit hemp plans for approval, the rules provide baseline requirements for hemp producers to follow.

The rules will immediately become effective upon publication in the Federal Register later this week. Thereafter, USDA intends to implement the hemp program without delay, including expedited review of state plans and issuing licenses. Once USDA receives a state's plan, USDA will approve or reject the plan within 60 days. If the plan is approved, USDA will issue an approval letter to the state and the plan will remain in effect unless revoked by USDA. If a state's plan is rejected, USDA will notify the state of the plan's deficiencies and permit submission of an amended plan for USDA review.

With these new rules, it is more important than ever to consult with knowledgeable legal professionals regarding state and federal laws governing the production, distribution, and sale of hemp and hemp-based products. For more information, please contact [Sam Felker](#) or any member of Baker Donelson's [FDA Group](#).