

USDA Hemp Rules – Is the Hemp Industry Still in the Weeds?

By Daniel S. Rosenbaum

The United States Department of Agriculture (“USDA”) published the Interim Final Rule for the U.S. Domestic Hemp Production Program in October 2019. This long-awaited guidance from the USDA was met with mixed results, both from the hemp industry and the financial industry.

Financial Sector

In response to the Interim Final Rule, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Financial Crimes Enforcement Network and the Office of the Comptroller of the Currency, in conjunction with the Conference of State Bank Supervisors issued a statement which encouraged normalization of relations between banks and the cannabis industry:

“Because hemp is no longer a Schedule I controlled substance under the Controlled Substances Act, banks are not required to file a Suspicious Activity Report (SAR) on customers solely because they are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations. For hemp-related customers, banks are expected to follow standard SAR procedures, and file a SAR if indicia of suspicious activity warrants.”

However, this issue has made the news again this month when the Buckeye State trade association Ohio Credit Union League requested further action by the USDA. Definitions in the law affect banking regulations and the credit unions wanted “Key Participant” to be defined as someone owning 25% of a hemp business, as Key Participants are required to have FBI background checks. The credit unions also requested the USDA make its records on licensed hemp growers available to financial institutions to enable them to vet potential hemp clientele.

Additional concerns remain regarding the federal illegality of marijuana. Marijuana is a Schedule I drug under the Controlled Substances Act. Financial institutions traditionally refuse to do business with the gray-area cannabis industry, and this prejudice carries over to the hemp industry in part because standards and testing to determine what is cannabis and what is hemp are murky. There is pending federal legislation that would address banking for the cannabis industry (the SAFE Banking Act), but it has not yet passed the Senate.

Hemp Industry

Hemp farmers and industry advocates have voiced many concerns about the Interim Final Rule, with one of the most vocalized concerns being about tetrahydrocannabinol (“THC”) levels. Under federal law (2018 Farm Bill) hemp must have a THC concentration of less than 0.3%, including both Delta-9 TCH (the psychoactive chemical in marijuana) and TCH-A (not psychoactive). Hemp farmers say the end result of this is having to grow twice as much acreage to get the same amount of end product.

Hemp farmers also have trouble guaranteeing THC levels under 0.3% given the unpredictability of growing environments. Many advocate raising the allowable THC limit to 1% to increase profits to more workable levels. In addition, only labs registered with the Drug Enforcement Agency can conduct tests to



determine THC levels, which raises concerns about the tests being done in a timely enough way for farmers to have all varieties of their hemp crops tested and receive results within the 15-day sampling window currently in place. Finally, hemp farmers have an issue with “hot hemp,” which is hemp that exceeds the federally allowed THC limits. These crops must be destroyed, which is devastating for farmers.

If you would like more information on this or other issues related to the hemp or cannabis industries, please contact me.

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