

**VISUAL ANALYSIS OF THE AGRICULTURAL MARKETING ACT OF 1946,
AS AMENDED ON December 20, 2018,
WITH RESPECT TO HEMP PRODUCTION IN THE UNITED STATES**

As of December 20, 2018, hemp is no longer an item listed under the 1979 Controlled Substances Act (CSA) and is no longer subject to enforcement by the Drug Enforcement Agency (DEA). Hemp is now under the control of the United States Department of Agriculture, like all other national crops – and the body of law that spells out the new rules is the Agricultural Marketing Act of 1946 (AMA). To better understand the intricacies of the newly revised AMA, we have prepared a visual analysis of the relevant section, *Subtitle G – Hemp Production*.

AGRICULTURAL MARKETING ACT OF 1946

[Title II of the Act of August 14, 1946]

[As Amended Through P.L. 115–334, Enacted December 20, 2018]

Subtitle G—Hemp Production

- Sec. 297A. Definitions.
- Sec. 297B. State and tribal plans.
- Sec. 297C. Department of agriculture.
- Sec. 297D. Regulations and guidelines; effect on other law.
- Sec. 297E. Authorization of appropriations.

Subtitle G—Hemp Production

SEC. 297A. [7 U.S.C. 1639o] DEFINITIONS.

In this subtitle:

(1) **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.

(2) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(3) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(4) **STATE.**—The term “State” means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(5) **STATE DEPARTMENT OF AGRICULTURE.**—The term “State department of agriculture” means the agency, commission, or department of a State government responsible for agriculture in the State.

(6) **TRIBAL GOVERNMENT.**—The term “Tribal government” means the governing body of an Indian tribe.

Hemp = *Cannabis sativa* L. plant with **THC ≤ 0.3%**
(THC can be 0.3% but not more)
↓
also seeds + anything produced from that plant
↓
including CBDs

SEC. 297B. [7 U.S.C. 1639p] STATE AND TRIBAL PLANS.

(a) SUBMISSION.—

(1) **IN GENERAL.**—A State or Indian tribe desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian tribe shall submit to the Secretary, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian tribe monitors and regulates that production as described in paragraph (2).

The federal government requires each State department of agriculture or Tribal government where hemp will be grown to show how the hemp production will be monitored and regulated.

(2) **CONTENTS.**—A State or Tribal plan referred to in paragraph (1)—

(A) shall only be required to include—

(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

More specifically, the federal government wants to see these seven items from the State or Tribal government. These are relevant because the State or Tribal government will, in turn, request some of this information from the growers:

(ii) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

(i) a legal description of the land;

(iii) a procedure for the effective disposal of—
(I) plants, whether growing or not, that are produced in violation of this subtitle; and
(II) products derived from those plants;

(ii) post-decarboxylation or similarly reliable testing methods for THC concentrations;

(iv) a procedure to comply with the enforcement procedures under subsection (e);

(iii) means of disposal for plants and products with THC over 0.3%;

(v) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;

(iv) a plan of enforcement for violators;

(vi) a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on which the information is received; and

(v) a plan for conducting annual inspections of hemp producers;

(vii) a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi); and

(vi) procedures for prompt reporting to the federal government; and

(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.

(vii) a guarantee by the State or Tribal government that it has the means to maintain the necessary control over the hemp production.

(3) **RELATION TO STATE AND TRIBAL LAW.**—

(A) **NO PREEMPTION.**—Nothing in this subsection preempts or limits any law of a State or Indian tribe that—

(i) regulates the production of hemp; and

(ii) is more stringent than this subtitle.

(B) **REFERENCES IN PLANS.**—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

(b) APPROVAL.—

(1) **IN GENERAL.**—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or

(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).

(2) **AMENDED PLANS.**—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the

Tribal government, as applicable, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).

(3) CONSULTATION.—The Secretary shall consult with the Attorney General in carrying out this subsection.

(c) AUDIT OF STATE COMPLIANCE.—

(1) IN GENERAL.—The Secretary may conduct an audit of the compliance of a State or Indian tribe with a State or Tribal plan approved under subsection (b).

(2) NONCOMPLIANCE.—If the Secretary determines under an audit conducted under paragraph (1) that a State or Indian tribe is not materially in compliance with a State or Tribal plan—

(A) the Secretary shall collaborate with the State or Indian tribe to develop a corrective action plan in the case of a first instance of noncompliance; and

(B) the Secretary may revoke approval of the State or Tribal plan in the case of a second or subsequent instance of noncompliance.

(d) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).

(e) VIOLATIONS.—

(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

(2) NEGLIGENT VIOLATION.—

(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

(i) failing to provide a legal description of land on which the producer produces hemp;

(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(iii) producing *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—

(i) a reasonable date by which the hemp producer shall correct the negligent violation; and

(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.

(C) RESULT OF NEGLIGENT VIOLATION.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not as a result of that violation be subject to any criminal enforcement action by the Federal Government or any State government, Tribal government, or local government.

The State or Tribal government is obligated to deal with violations according to the rules below.

Neigent violations include:

(i) not describing, or improperly describing, the land on which hemp is growing;

(ii) growing hemp without a license; or

(iii) growing hemp with THC over 0.3%.

The penalty for negligently violating the AMA's hemp production rules is corrective action. The State or Tribal government will require the hemp producer to:

(i) provide a date by which the violation will be remedied; and

(ii) periodically report on its compliance with the State or Tribal government rules for at least two years.

The AMA specifically states that negligent violation of the hemp rules will not result in criminal enforcement by the Federal, State, or Tribal government.

(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

Repeat violations: The negligent violation of the rules 3 times in a 5-year period.

Penalty: The hemp producer is prohibited from producing hemp for 5 years.

(3) OTHER VIOLATIONS.—

(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—

More-than-negligent violations:

They are not defined or listed, but the State or Tribal government must report the hemp producer to law enforcement both local and federal.

(i) the State department of agriculture or Tribal government, as applicable, shall immediately report the hemp producer to—

(I) the Attorney General; and

(II) the chief law enforcement officer of the State or Indian tribe, as applicable; and

(ii) paragraph (1) of this subsection shall not apply to the violation.

Also, none of the remedies for negligent violations are available for the more-than-negligent type.

(B) FELONY.—

(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction—

Felony:

Anyone who has been convicted of a controlled substance-related felony at any time, even before December 20, 2018, cannot produce hemp for 10 years from the date of conviction.

(I) to participate in the program established under this section or section 297C; and

(II) to produce hemp under any regulations or guidelines issued under section 297D(a).

(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.

... except:

If the hemp producer was already legally growing hemp under a pilot program authorized by the 2014 U.S. Farm Bill before December 20, 2018, then the hemp production can continue.

(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section shall be ineligible to participate in that program.

False Statement:

Lying on the application about important facts will disqualify the applicant from being a hemp producer.

(f) EFFECT.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—

(1) for which a State or Tribal plan is not approved under this section, if the production of hemp is in accordance with section 297C or other Federal laws (including regulations); and

(2) if the production of hemp is not otherwise prohibited by the State or Indian tribe.

The remainder of the text in this Subtitle addresses situations in which a State or Tribal government fails to obtain the necessary approvals from the federal government, and other miscellaneous provisions that do not affect the public.

SEC. 297C. [7 U.S.C. 1639q] DEPARTMENT OF AGRICULTURE.

(a) DEPARTMENT OF AGRICULTURE PLAN.—

(1) **IN GENERAL.**—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian tribe shall be subject to a plan established by the Secretary to monitor and regulate that production in accordance with paragraph (2).

(2) **CONTENT.**—A plan established by the Secretary under paragraph (1) shall include—

(A) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

(B) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

(C) a procedure for the effective disposal of—

(i) plants, whether growing or not, that are produced in violation of this subtitle; and

(ii) products derived from those plants;

(D) a procedure to comply with the enforcement procedures under subsection (c)(2);

(E) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle; and

(F) such other practices or procedures as the Secretary considers to be appropriate, to the extent that the practice or procedure is consistent with this subtitle.

(b) **LICENSING.**—The Secretary shall establish a procedure to issue licenses to hemp producers in accordance with a plan established under subsection (a).

(c) VIOLATIONS.—

(1) **IN GENERAL.**—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the territory of that Indian tribe without a license issued by the Secretary under subsection (b).

(2) **NEGLIGENT AND OTHER VIOLATIONS.**—A violation of a plan established under subsection (a) shall be subject to enforcement in accordance with paragraphs (2) and (3) of section 297B(e), except that the Secretary shall carry out that enforcement instead of a State department of agriculture or Tribal government.

(3) **REPORTING TO ATTORNEY GENERAL.**—In the case of a State or Indian tribe covered by paragraph (1), the Secretary shall report the production of hemp without a license issued by the Secretary under subsection (b) to the Attorney General.

(d) INFORMATION SHARING FOR LAW ENFORCEMENT.—

(1) **IN GENERAL.**—The Secretary shall—

(A) collect the information described in paragraph (2); and

(B) make the information collected under subparagraph (A) accessible in real time to Federal, State, territorial, and local law enforcement.

(2) **CONTENT.**—The information collected by the Secretary under paragraph (1) shall include—

(A) contact information for each hemp producer in a State or the territory of an Indian tribe for which—

(i) a State or Tribal plan is approved under section 297B(b); or

(ii) a plan is established by the Secretary under this section;

(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and

(C) for each hemp producer described in subparagraph (A)—

(i) the status of—

(I) a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(II) a license from the Secretary; and

(ii) any changes to the status.

SEC. 297D. [7 U.S.C. 1639r] REGULATIONS AND GUIDELINES; EFFECT ON OTHER LAW.

(a) **PROMULGATION OF REGULATIONS AND GUIDELINES; REPORT.**—

(1) **REGULATIONS AND GUIDELINES.**—

(A) **IN GENERAL.**—The Secretary shall promulgate regulations and guidelines to implement this subtitle as expeditiously as practicable.

(B) **CONSULTATION WITH ATTORNEY GENERAL.**—The Secretary shall consult with the Attorney General on the promulgation of regulations and guidelines under subparagraph (A).

(2) **REPORT.**—The Secretary shall annually submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing updates on the implementation of this subtitle.

(b) **AUTHORITY.**—Subject to subsection (c)(3)(B), the Secretary shall have sole authority to promulgate Federal regulations and guidelines that relate to the production of hemp, including Federal regulations and guidelines that relate to the implementation of sections 297B and 297C.

(c) **EFFECT ON OTHER LAW.**—Nothing in this subtitle shall affect or modify—

(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

(2) section 351 of the Public Health Service Act (42 U.S.C. 262); or

(3) the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services—

(A) under—

(i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(ii) section 351 of the Public Health Service Act (42 U.S.C. 262); or

(B) to promulgate Federal regulations and guidelines that relate to the production of hemp under the Act described in subparagraph (A)(i) or the section described in subparagraph (A)(ii).

SEC. 297E. [7 U.S.C. 1639s] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle.