

## **Hemp Legislation Situation Analysis**

As of January 30, 2019

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### Hemp Profile

A 2015 federal report found that hemp is used in more than 25,000 products worldwide, including automotive interiors, textiles, paper, foods, beverages and nutritional supplements. Hemp is produce for use as food, feed, fiber, seed, CBD oil. A wide range of products, including fibers, textiles, paper, construction and insulation materials, cosmetic products, animal feed, food, and beverages all may use hemp. While hemp and marijuana products both are species of the cannabis plant, hemp is typically distinguished by its lower concentration of tetrahydrocannabinol (THC). The Farm Bill defines industrial hemp as a variety of cannabis with a THC concentration of not more than 0.3 percent.

### Past State Legislative Activity

In the 2014 Farm Bill, industrial hemp was defined and allowed state departments of agriculture or universities to grow and produce hemp as part of research or pilot programs. As a result, 41 states opted to participate and created state laws to govern the research. Seed procurement for these programs was generally restricted to imports and was very controlled.

### Hemp Seed Certification

The Association of Official Seed Certifying Agencies (AOSCA) adopted certification standards for industrial hemp seed in 2014, based upon the Canadian Industrial Hemp Regulations. It is important to keep in mind the AOSCA standards verify varietal purity, and not THC or CBD levels. In 2016 the Colorado Department of Agriculture launched the first industrial hemp seed certification program in the country to validate which seeds would yield hemp that falls within the 0.3 percent THC threshold mandated by state law. Certified industrial hemp seed has also been produced in Kentucky and Tennessee, and producers in other states are making plans to begin production. Given the inconsistencies with seed varieties currently available, growers have reported difficulty sourcing Certified seed, mostly due to lack of infrastructure. Some seed has been imported from Canada and European seed growers.

### Existing Seed Access

Procurement of legal and viable hemp seed presents a challenge for research programs and commercial growers in the United States. These seeds can be difficult to obtain, however, because hemp was regulated under the Federal Controlled Substances Act until the passage of the 2018 Farm Bill in December. Since the 2014 Farm Bill that allowed for limited hemp research, several states have taken independent action to regulate industrial hemp seeds. At least four states established specific licenses or certification programs for hemp seed distributors and producers:

- California requires hemp seed breeders to register with their local county agricultural commissioner.
- Indiana allows growers who obtain an agricultural hemp seed production license to produce seeds. Licensees may then sell seeds or retain them to propagate future crops.
- Maine allows the commissioner of agriculture, conservation and forestry to issue licenses to seed distributors if their seeds are from a certified seed source. (NOTE:

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“certified” is referenced by state regulations, not “Certification” as in program through AOSCA)

- Oregon requires growers who produce hemp seeds capable of germination to register with the Oregon Department of Agriculture if they intend to sell seeds. Growers who wish to retain seeds do not need to register as a seed producer.

Two states have on-going hemp breeding programs:

- Colorado S.B. 184 (2014) created an Industrial Hemp Grant Research Program for state universities to research and develop hemp strains that are best suited for industrial applications and develop new seed strains.
- The North Carolina Hemp Commission studies the best practices for soil conservation and restoration in collaboration with two state universities.

### Federal Legislation Within the 2018 Farm Bill

Passage of the 2018 Farm Bill doesn't mean just anyone can go out and start growing industrial hemp. The bill changed federal policy regarding industry hemp, including the removal of hemp from the Controlled Substances Act and the consideration of hemp as an agricultural product. State governments were designated as the primary regulatory entity for growing industrial hemp commercially and require them to create regulatory programs to that effect. State regulatory bodies, such as the state departments of agriculture, must coordinate with related state agencies (drug enforcement, taxation, environmental, etc.) to generate a plan. That plan is then submitted to the USDA for approval. States that decline to devise a regulatory system for the cultivation of hemp will require growers to apply for a license under the federal program. A state plan must include certain requirements, such as keeping track of land, testing methods, and disposal of plants or products that exceed the allowed THC concentration.

### What's Next?

State regulatory agencies that have been tapped for hemp and hemp seed regulations are currently meeting via conference call weekly so that they can work toward consistency between the states. Once the state plans are approved by USDA, hemp can be cultivated for the transfer of hemp products across states for both commercial and non-commercial purposes. Two states have submitted plans at this point, although because of the recent federal government shutdown USDA has not responded.

The growth of hemp will only be allowed in production as a regulated crop. However, hemp can now be treated as an agricultural commodity and allowed to become a mainstream crop. Thus, hemp farmers can receive protections under the Federal Crop Insurance Act and be protected from crop losses. The 2018 Farm Bill does not provide for any restrictions related to transport, sale, or the possession of hemp-related products.

A major misconception concerning the bill is that it legalizes cannabidiol (CBD), the one product that seems to be generating the most interest. However, the new law is ambiguous. The language in the 2018 Farm Bill removes hemp-derived products from Schedule I status of the Controlled Substances Act, the Bill, but that specific section does not legalize CBD. That means

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that CBD is still a schedule I substances under federal law. However, under specific circumstances, such as production in a manner consistent with the Bill, cannabidiol can be considered legal.

A couple of issues must be considered by growers considering hemp production. The first is that there isn't much infrastructure at this time for harvesting and processing hemp in the United States. The other is that there are no pesticides labeled for hemp in the U.S.

### Hemp Legalization Status Activity in the States as of January 2019

Thus far, 249 state bills have been filed in the state legislatures that attempt to regulate hemp production, as directed in the 2018 Farm Bill. These bills address a variety of policy issues, such as; definitions, licensure of growers, regulation and certification of seeds, state-wide commissions and legal protection of growers. Basically, to allow hemp production in their state, regulators must create programs to license growers, track production, test the hemp to make sure it doesn't have more than the 0.3 percent limit of the psychoactive chemical known as THC, and create violation punishments. Depending on the state structure, some states can adopt these regulations by rule, others must pass legislation.

### ASTA Policy Adopted July 2018

The American Seed Trade Association supports the following positions with regard to federal hemp legislation:

- 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.
- Seed supply sourcing should only include free market accessibility from commercial production.
- The Association of Official Seed Certifying Agencies standards for production of industrial hemp seed should be used for all production to ensure quality and differentiation between hemp and marijuana because of the difficulty in differentiating between the two crop seeds.
- Interstate transportation rules should be clarified to eliminate the disparate and confusing standards on commerce for hemp seed and plant shipments.