



Hemp

Issue

The 2018 Farm Bill amended the Controlled Substances Act and removed hemp and hemp seeds from federal authority from products containing THC levels not greater than 0.3%. However, farmers still must receive a permit from their state department of agriculture. In the U.S., hemp is still a new crop and shows potential but issues remain such as developing the supply chain, branding the product, educating consumers and policymakers, developing end markets and other challenges. There is a great amount of uncertainty surrounding the hemp market in general, as well as in the policy and regulatory arenas. Farm Bureau does not have policy pertaining to hemp.

Background

Hemp fiber can be used to make textiles, building materials, animal bedding, mulch, paper, industrial products, and biofuels. The hemp seed, or grain, is used in food and feed products. The hemp oil from the seed is used to make personal care products and industrial products, including paints, solvents, and lubricants.

Hemp is the same genus and species as marijuana but does not cause psychoactive effects because of the low levels of delta-9 tetrahydrocannabinol (THC). THC is the primary psychoactive cannabinoid in marijuana. THC is reportedly found anywhere between 3% to 20% percent in the marijuana (on a dry weight basis). Marijuana is prepared or processed in such a way as to allow the user of marijuana to inhale or absorb THC to achieve a psychoactive state of mind. Hemp, however, does not contain enough THC to achieve the psychoactive effect like marijuana. According to law, hemp contains no more than 0.3% THC level.

A University of Tennessee (UT) report, *Status of Industrial Hemp in Tennessee*, explains much about hemp production and provides a historical perspective on hemp. The report explains that hemp was produced in the United States from 1645 until 1958. Historically, hemp was regarded primarily as a crop valued for fiber and grain. Hemp production declined significantly following the Civil War as the cheaper jute and abaca plants were imported and displaced most domestic hemp fiber production. The Marijuana Tax Act of 1937 aimed to restrict US marijuana production and required producers of hemp to register with the federal government. Hemp production in the United States briefly increased during World War II because jute and abaca imports were disrupted. During this time the United States Department of Agriculture (USDA) implemented an emergency program to produce hemp as a domestic substitute. Following World War II, industrial hemp production significantly decreased with the last reported commercial industrial hemp crop in the United States being produced in Wisconsin in 1958. The Controlled Substance Act of 1970 categorized any product containing any THC as a Schedule I drug. Thereafter, the cultivation of all *Cannabis sativa*, including hemp, became strictly regulated by the federal government and was practically prohibited.

Since the 1990s, varieties of hemp containing low levels of THC were legalized in many European countries, as well as Canada and Australia. Hemp can be grown as a seed, a fiber or a dual-purpose crop. When hemp is grown as a fiber, it is planted in a high density to maximize stalk production. The hemp plant produces an outer ring of more valuable bast fibers, and an inner ring of less valuable hurd fibers. When hemp is grown for seed, the plants tend to be spaced further apart to encourage seed production. The seeds typically contain 29% to 34% oil which is like other oils, such as linseed. Hemp products not containing THC could be imported into the United States.

The UT report provides information suggesting methods of intake of cannabinoids, namely cannabidiol (CBD) and THC, taken individually or in combination, may treat certain medical conditions. It is important to reiterate, CBD is not psychoactive and therefore does not produce a high. There is a belief CBD provides therapeutic benefits, however more data is needed to fully understand the short- and long-term effects of CBD, THC, and other cannabinoids for uses in medicine.

The 2014 Farm Bill allowed “institutions of higher education” and state agriculture departments to grow hemp under a pilot program as long as state law permitted it. Additionally, the 2014 Farm Bill established a definition of industrial hemp, officially setting the THC threshold in the U.S. at 0.3% on a dry weight basis. At the time, all cannabis varieties were considered Schedule I controlled substances, and though the 2014 Farm Bill allowed hemp to be grown, certain aspects of production were still subject to Drug Enforcement Administration oversight, including the importation of seeds for cultivation.

As provided in the 2014 Farm Bill, the state of Tennessee was allowed to create a pilot project for growing of industrial hemp and some growers participated. This enabled legal growing of industrial hemp in states with an industrial hemp pilot program operated under the supervision of the state department of agriculture or a university for the purpose of research. Section 7606 of the 2014 Farm Bill, *Legitimacy of Industrial Hemp Research*, defined industrial hemp as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” Shortly after passing of the 2014 Farm Bill, Tennessee legislators in 2014 passed Public Chapter No. 916 of the 108th General Assembly, legalizing the production of hemp in the state. In 2015, industrial hemp was legally produced in the state for the first time in more than 60 years and production has continued to grow since then. In the pilot year of 2015, there were 49 licenses distributed by the Tennessee Department of Agriculture followed by 64 in 2016, 79 in 2017, and 226 in 2018. Each year some of the license holders did not grow hemp. In 2019 the number of license holders has skyrocketed to over 3300 licensed growers in the state.

The 2018 Farm Bill amended the Controlled Substances Act and removed hemp and hemp seeds from federal authority from products containing THC levels not greater than 0.3%. The 2018 Farm Bill also requires the US Secretary of Agriculture to conduct a study of the hemp-related agricultural pilot programs implemented under the 2014 Farm Bill (such as in Tennessee), along with any other agricultural and academic research on the subject, to determine the economic viability of a domestic hemp market. Additionally, while the law expands the potential for hemp production, it does not create a system in which producers can grow it as freely as other crops. Thus, farmers still must receive a permit from their state department of agriculture. The 2018 Farm Bill outlined actions that would be considered violations of the law, such as producing a plant with higher than 0.3% THC content or cultivating hemp without a license. It even goes into potential punishments and what happens to repeat offenders. The bill also sets up a shared state and federal regulatory authority over the issue, outlining the steps a state must take to develop a plan to regulate hemp and submit it to the Secretary of Agriculture for approval.

The 2018 Farm Bill also listed hemp as a covered commodity under crop insurance and directed the Federal Crop Insurance Corporation board to streamline the process for developing hemp policies. USDA is undertaking the process to implement the required rules for hemp production, such as how the crop will be included in the federal crop insurance program. USDA’s Risk Management Agency issued a bulletin early in 2019 addressing some of the questions about how hemp will be treated now that it is a covered crop. The bulletin established that a producer who derived part of his/her revenue from hemp would not be found ineligible to participate in the Whole Farm Revenue Protection Plan (WFRP). However, when the 2019 WFRP was published in August 2018, hemp as a commodity is not insurable in 2019. This means that a producer can grow hemp in 2019 without becoming ineligible to insure their other commodities but cannot have that hemp insured under WFRP. In 2019, there is no safety net for this crop. Most observers think that in 2020 hemp will be a covered commodity for crop insurance but questions remain. For example, let’s say a farmer enrolls his hemp crop in crop insurance, but then the crop goes over the 0.3 percent limit required by law and the farmer has to destroy the crop: it is not clear if this would be considered a covered loss. Farm Bureau anticipates USDA will release their regulatory framework by the end of the year, potentially by late summer/early fall 2019.

The 2018 Farm Bill explicitly preserved the Food and Drug Administration’s (FDA) authority to regulate products containing cannabis or cannabis-derived compounds under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act. This allows FDA to continue enforcing the law to protect patients and the public while also providing potential regulatory pathways for products containing cannabis and cannabis-derived compounds. The FDA has expressed intent to treat products containing cannabis or cannabis-derived compounds like any other FDA-regulated products in that the products are subject to the same authorities

and requirements as FDA-regulated products containing any other substance. It is unlawful under the FD&C Act to introduce food containing added CBD or THC into interstate commerce, or to market CBD or THC products as, or in, dietary supplements, regardless of whether the substances are hemp-derived. This is because both CBD and THC are active ingredients in FDA-approved drugs and were the subject of substantial clinical investigations before they were marketed as foods or dietary supplements. Under the FD&C Act, it is illegal to introduce drug ingredients like these into the food supply or to market them as dietary supplements. The FDA is concerned at the number of drug claims being made about products not approved by the FDA that claim to contain CBD or other cannabis-derived compounds. Among other things, the FDA requires a cannabis product (hemp-derived or otherwise) that is marketed with a claim of therapeutic benefit, or with any other disease claim, to be approved by the FDA for its intended use before it may be introduced into interstate commerce. This is the same standard to which any product marketed as a drug for human or animal use. FDA has already taken action against those who have made significant medical claims of CBD. What regulatory framework comes from FDA, if any, is undetermined and could have a significant impact on the future of hemp market.

On the state level, in 2019 Public Chapter 87 passed which requires the commissioner of agriculture to submit a plan to the federal government for Tennessee to have primary regulatory authority over hemp production in Tennessee, declaring the administrative framework for the plan as required in the 2018 Farm Bill. PC 87 also defines how to obtain licensing to grow hemp, the definition of hemp, violation charges, and changes references in the law from “industrial hemp” to “hemp. Furthermore, the General Assembly established a task force to study issues related to hemp. This task force will investigate items such as processing, testing, transporting, regulation of hemp products, and the potential economic impact on rural areas of the state (PC387). Legislation also passed to prohibit hemp smoking and possessing hemp smoking paraphernalia if under 18 years old (PC303).

It is important to consider production of the crop, as there are no labeled pesticides to control weeds, insects, and diseases for hemp, and growers must take significant steps to control weed and other pests. Production costs may be significant therefore it is important that potential hemp producers understand the high costs of licensing fees, seed or clone costs, and THC testing fees. Furthermore, depending on the variety and ultimate end purpose, hemp can be very difficult to harvest and be prepared for processing. It is vital for hemp growers to know their marketing strategy because without a contract, hemp can cause significant financial losses of thousands of dollars per acre.

Questions

1. Are you or farmers in your county growing hemp?
2. Do you foresee hemp being a long-term viable crop for farmers in Tennessee?
3. What issues do you see with hemp production?
4. What kind of policies should Farm Bureau have relating to hemp?

Farm Bureau Policy

Farm Bureau does not have policy pertaining to hemp.

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