

U.S. Hemp Roundtable

IMMEDIATE RELEASE

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WHAT DOES THE FARM BILL DO?

ANALYSIS BY U.S. HEMP ROUNDTABLE GENERAL COUNSEL JONATHAN MILLER

Late in the evening of December 10, 2018, the 2018 Farm Bill House/Senate Conference Committee released its Conference Report. The [807-page document](#) is nearly half a foot tall. Hemp is discussed in only a few handfuls of pages. But the impact on the industry is monumental:

- The era of hemp prohibition is over. Hemp is now permanently removed from the Controlled Substances Act (CSA). It is forever deemed an agricultural commodity, no longer mistaken as a controlled substance, like marijuana.
- By redefining hemp to include its “extracts, cannabinoids and derivatives,” Congress explicitly has removed popular hemp products -- such as hemp-derived cannabidiol (CBD) -- from the purview of the CSA. Accordingly, the Drug Enforcement Administration no longer has any possible claim to interfere with the interstate commerce of hemp products. This should give comfort to federally regulated institutions -- banks, merchant services, credit card companies, e-commerce sites and advertising platforms -- to conduct commerce with the hemp and hemp product industry.
- Hemp farmers now may finally access needed crop insurance and can fully participate in USDA programs for certification and competitive grants.
- State and Tribal governments may impose separate restrictions or requirements on hemp growth and the sale of hemp products – however, they cannot interfere with the interstate transport of hemp or hemp products. We are hopeful that local and state officials will follow Congress’ lead, as well as the statements and resolutions of the World Health Organization and the U.S. Food and Drug Administration (FDA) that declare, after intense scientific scrutiny, that CBD is safe, non-toxic, and non-addictive.
- The FDA continues to exercise jurisdiction over the regulation of ingestible and topical hemp products. We applaud the agency’s continued efforts to crack down on bad actors who undermine the industry through misguided marketing claims. And while we are concerned about non-binding statements made by the FDA that have led some state and local officials to question the legality of the retail sale of hemp-derived CBD, we are hopeful that we can work with the agency to clarify that CBD – which their own scientists concluded has no abuse potential and does not pose a risk to public health – should not be withheld from Americans who count on it for their health and wellness.

SECTION BY SECTION

Section 7129 (p. 313): Includes hemp in USDA’s supplemental and alternative crops programs.

Section 7501 (p. 338): Includes hemp in USDA’s critical agricultural materials programs.

Section 7605 (p. 347): Orders the USDA Secretary to prepare a report on the 2014 Farm Bill pilot program, and then repeals that program one year after the new permanent hemp program is created.

Section 10113 (p. 429): The guts of the new permanent legalization regime:

- Section 297A (p. 429) Defines hemp as all parts of the plant less than 0.3% THC, including “derivatives,” “extracts” and “cannabinoids” and permits hemp production in all states and territories.
- Section 297B (a)-(d) (p. 429) Empowers states and Tribes to submit plans to USDA to implement a permanent hemp growing program. Requires information gathering, testing, inspection and disposal

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procedures. The USDA Secretary must sign off on, or reject, the plan within 60 days, and consult with the Attorney General. The Secretary can later audit state programs and work with the states to develop corrective action plans where there is noncompliance.

- Section 297B(e)(p. 431): Orders states and Tribes to develop procedures to address violations, including corrective action in the case of negligence.
- Section 297B(e)(3)(B) (p. 432): Individuals who commit drug felonies cannot participate in state or Tribal growth programs for 10 years following the date of their conviction. However, participants in the 2014 Farm Bill pilot programs are grandfathered in to participate in permanent programs despite any prior felony committed.
- Section 297C (p. 432): States and Tribes are required to maintain information on lands where hemp is grown and testing, enforcement, inspection and disposal procedures. The USDA Secretary must collect such information to be accessible in real time to local, state and federal law enforcement.
- Section 297D (p. 434): The USDA Secretary is required to promulgate guidelines and regulations and submit an annual report to Congress on the program's implementation.
- Section 297D(c)(p. 434): Nothing in the new law affects the FDA's authority under the Food, Drug and Cosmetic Act or the Public Health Service Act.

Section 10114 (p. 435): Nothing in the act prohibits the interstate commerce of hemp, nor can States or Tribes prohibit the transportation of hemp or hemp products through their territory.

Title XI (p. 439): Hemp farmers are made eligible for crop insurance, and marketability requirements for the crop insurance program can be waived.

Section 12619 (p. 540): Hemp is removed from the definition of "marihuana," and THC found in hemp is excluded from the definition of a controlled substance.

Key notes from the Conference Report Managers' Summary:

p. 738: The Managers note that "state and Tribal governments are authorized to put more restrictive parameters on the production of hemp, but are not authorized to alter the definition of hemp or put in place policies that are less restrictive."

p. 738: The Managers note that the USDA Secretary must consult with the Attorney General regarding approval of state or Tribal plans, but "the Managers intend that the final decision to be made by the Secretary." States or Tribes can appeal or resubmit plans that are rejected or revoked.

p. 739: Any drug felonies committed after the permanent program begins will ban participants from participating, regardless of whether they participated in the 2014 Farm Bill pilot program.

p. 739: The USDA Secretary must make program information accessible in real time to law enforcement, and is encouraged to develop a memorandum of understanding to define the parameters of this information sharing.

p. 739: "While states and Indian tribes may limit the production and sale of hemp and hemp products within their borders, the Managers, in Section 10122, agreed to not allow such states and Indian tribes to limit the transportation or shipment of hemp or hemp products through the state or Indian territory."

The U.S. Hemp Roundtable is the hemp industry's leading business trade association. The Roundtable involves more than 60 businesses – representing all parts of the hemp food chain, from seed to sale – as well as all of the major national grassroots organizations in the industry. The Roundtable's primary mission has been to support lobbying efforts to secure permanent legalization of hemp and hemp products at the federal and state level.

Jonathan Miller, General Counsel to the U.S. Hemp Roundtable, is the Member-in-Charge of Frost Brown Todd LLC (Lexington KY) and the former Kentucky State Treasurer.