

You Can Transport Hemp Across State Lines, But State Governments May Object

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The federal government will not stop you from transporting hemp around the country. Unlike marijuana, which has high THC concentration, hemp has only 0.3 percent of the delta-9 THC concentration on a dry-weight basis. The Agricultural Improvement Act of 2018, or the 2018 Farm Bill, introduced unprecedented progressive measures in the cannabis industry — notably, removing hemp from Schedule I of the Controlled Substances Act and allowing the free flow of hemp through interstate commerce.

To address the looming questions regarding the 2018 Farm Bill, the Office of the General Counsel (OGC) at the U.S. Department of Agriculture (USDA) issued a legal opinion in late May 2019. According to the OGC, states and Indian tribes can no longer prohibit interstate transportation of hemp lawfully produced under the 2014 Farm Bill. The Agricultural Act of 2014, or the 2014 Farm Bill, allowed higher education institutions and departments of agriculture across states to cultivate industrial hemp for academic research or research under an agricultural pilot program, so long as the state allowed it. The authorized research under an agricultural pilot program includes the study of the growth, cultivation, or marketing of industrial hemp.

The OGC also confirmed that after the USDA publishes regulations on implementing the hemp production provisions in the 2018 Farm Bill, states and Indian tribes cannot prohibit interstate transportation of lawfully produced hemp under a state or Indian tribe plan or licensed under a USDA plan.

Despite the federal government's clear stance, some state governments are not on board, particularly states that prohibit hemp cultivation. Indeed, in January 2019, Idaho law enforcement seized a truck carrying hemp transported from Oregon to Colorado when it passed through Idaho because Idaho state law prohibits any substance containing THC. This matter escalated all the way to the Ninth Circuit, and oral arguments are scheduled on August 28, 2019 (*Big Sky Scientific LLC v.*

Jan Bennetts, No. 19-35138). The question before the Ninth Circuit is whether the 2018 Farm Bill protects the interstate transportation of industrial hemp lawfully produced under the 2014 Farm Bill.

Until the courts weigh in on the matter, companies in the hemp industry can take preventive measures to avoid run-ins with law enforcement. Providing truckers transporting the hemp with a lab certificate attesting to the 0.3 percent THC content level is a good way to eliminate confusion between hemp and illegal cannabis. A copy of the hemp cultivation license issued under the state, tribe, USDA plan, or the 2014 Farm Bill can dispel doubts regarding the lawfulness of the production. While those documents can be generally helpful, the cannabis industry is evolving rapidly and each company is unique. An attorney can help companies navigate the law and cater to each company's unique demands.

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