§ 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).

(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;

(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;

(iii) a procedure for the effective disposal of—

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

(II) products derived from those plants;

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

(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 subchapter;

(vi) a procedure for submitting the information described in section 1639q(d)(2) of this title, as applicable, to the Secretary not more than 30 days after the date on which the information is received; and

(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

(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 subchapter.

(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 subchapter.

(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 subchapter.

(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.

(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.

(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—

(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.

(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 December 20, 2018, shall be ineligible, during the 10-year period following the date of the conviction—

(I) to participate in the program established under this section or section 1639q of this title; and

(II) to produce hemp under any regulations or guidelines issued under section 1639r(a) of this title.

(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 5940 of this title before December 20, 2018.

(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.

(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 1639q of this title or other Federal laws (including regulations); and

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

(Aug. 14, 1946, ch. 966, title II, § 297B, as added Pub. L. 115–334, title X, § 10113, Dec. 20, 2018, 132 Stat. 4909.)

§ 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 1639p of this title, 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 subchapter; and