

HEMP: NORTH CAROLINA'S NEW CASH CROP?

Something extraordinary happened in December 2018:

President Donald J. Trump signed into law the Agriculture Improvement Act of 2018, a.k.a. the "2018 Farm Bill." Farm bills are adopted by Congress from time to time to reauthorize and modify programs that address, among other things, commodity support, conservation, nutrition assistance, farm credit, rural development, research activities, forestry, energy, horticulture, and crop insurance.

The 2018 Farm Bill did more than that: it legalized hemp.

Hemp Is Legal

For years, hemp was considered a Schedule I controlled substance under the Controlled Substances Act of 1972. The reins were loosened a bit with the passage of the Agricultural Act of 2014, which authorized research institutions and state agricultural agencies to grow industrial hemp as part of a research pilot program. North Carolina then established its own pilot program and the NC Industrial Hemp Commission in 2015. Although that was a huge step forward for hemp in general, the authorizing statutes, and the rules and regulations developed as a result, were limited in nature and left major issues to speculation – like the legality of some commercial hemp activities and hemp-derived cannabidiol ("CBD"). Those legal ambiguities also largely prevented industry participants from accessing traditional banking services, insurance programs (like crop insurance for growers), and other commonplace business activities.

Now, though, hemp and hemp-derived cannabinoids, extracts, and isomers have been legalized on the Federal level. Some of its immediate effects include:

- Expansion of the legal definition of "hemp" to include all parts of the Cannabis sativa L. plant, "including seeds 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% on a dry weight basis."

- Amendment of the definition of "marijuana" under the CSA to expressly exclude "hemp" (as defined above) and to expressly carve-out of the Schedule I controlled substances list any tetrahydrocannabinols ("THC") that exist in "hemp."
- States may, individually, determine whether to retain primary regulatory authority over the production of hemp within their borders. To do so, a state must submit to the US Secretary of Agriculture its plan to monitor and regulate hemp production. Importantly, that plan must include "a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the state." This is consistent with the test requirements already enforced by the North Carolina Department of Agriculture & Consumer Services (which oversees testing for the current pilot program).

- "Hemp" and related products can be transported legally across state lines and states must not interfere with that transport, allowing for interstate commerce.

- "Hemp" growers can participate in crop insurance and government subsidy programs, as they are developed and implemented by the regulating authorities.

With the passage of the 2018 Farm Bill, hemp will effectively become a commodity crop for farmers and, we hope, it will be a boon for North Carolina's agricultural economy. Many of the concerns that previously faced hemp and CBD companies have been alleviated. But many regulatory concerns remain to be resolved, especially with respect to CBD.

CBD Regulations Loom

CBD represents one of the fastest growing – and, perhaps, the most controversial and commercially profitable – segments of the hemp industry today.

There is no shortage of claims about CBD's helpful properties, with common-place industry acceptance that it can be used to, among other things, alleviate inflammation and anxiety. CBD has been, and it continues to be, incorporated into a wide variety of consumer products, including lozenges, honey, and even an FDA-approved prescription medicine. But, as the legal and regulatory landscape surrounding hemp and CBD continues to develop, there remains uncertainty – at least

for now – about the legality of using hemp-derived CBD to produce food, cosmetic, and dietary supplement products.

On the same day the 2018 Farm Bill became law, the Food and Drug Administration ("FDA") released a press issued on the matter. The FDA statement is not binding or controlling, but it does forecast the FDA's clear intention to take an active role in regulation and enforcement for hemp and CBD products going forward.

By issuing that press release, the FDA has publicly stated that:

- It will continue to enforce the law (including the Federal Food, Drug, and Cosmetic Act, or "FD&C Act") in an effort to protect patients, the public, and to promote the agency's overall public health role.
- Products containing cannabis or cannabis-derived

compounds (like CBD) will be subject to the same authorities and requirements as other non-cannabis FDA regulated products.

- Hemp or hemp-derived CBD products that are "marketed with a claim of therapeutic benefit, or with any other disease claim" must be approved by the FDA before being introduced into interstate commerce.

- Hemp or hemp-derived CBD products marketed "for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases" must be approved by the FDA before they are marketed for sale in the U.S.

- 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."

Informed Legal Counsel is Critical

For now, many questions remain for North Carolina's hemp and CBD companies. Will CBD ultimately be regulated entirely as a drug? Will it be treated as an additive not subject to FDA approval? Or perhaps the specific application of CBD to a product will drive how it is treated? What about hemp flower as a food additive? We do not yet know the answers to these and the many other questions.

We urge anyone considering hemp cultivation, CBD processing, product manufacturing sales or distribution to seek legal counsel before investing significant time and money. Ward and Smith's Agribusiness practice team can advise you as you work through these and other complex legal issues.



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