

USDA Issues Final Rule for Hemp Production in Indian Country



January 21, 2021 | **CLIENT ALERTS**

The United States Department of Agriculture (USDA) has issued its Final Rule, 86 FR 5596-01, on hemp production in Indian country. The Final Rule supersedes the Interim Final Rule establishing the Domestic Hemp Production Program. Notably, the Final Rule authorizes tribes to assert primary regulatory jurisdiction over the production of hemp within their borders, regardless of the land status of the parcel where the hemp is being cultivated.

In 2018, Congress passed the Agriculture Improvement Act, more commonly known as the “2018 Farm Bill,” Public Law 115-334, which required the USDA to promulgate regulations and guidelines for states and tribes seeking to establish and administer programs to produce hemp. Tribes and states desiring to assert primary regulatory authority over the production of hemp were authorized to submit individualized plans concerning the monitoring and regulation of hemp production for the USDA Secretary’s approval. The Secretary was also directed to promulgate a generic plan to monitor and regulate hemp production for tribes and states that lack an approved plan. Pursuant to the 2018 Agriculture Improvement Act, the USDA issued an Interim Final Rule, which created a framework for the legal cultivation and processing of hemp on state and tribal lands.

The Final Rule clarifies an ambiguity in the Interim Final Rule regarding tribal jurisdiction over hemp production by non-Indians on fee lands within an Indian nation’s territory. Section 990.4(b)(4) of the final rule provides that “a Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority.” The USDA’s territorial approach to the regulation of hemp in Indian country is an important recognition of tribal sovereignty over all lands within a tribe’s territory.

The Final Rule takes effect on March 22, 2021.

Please contact any of the Lippes Mathias Indian Law Team Members below with questions regarding this client alert.

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