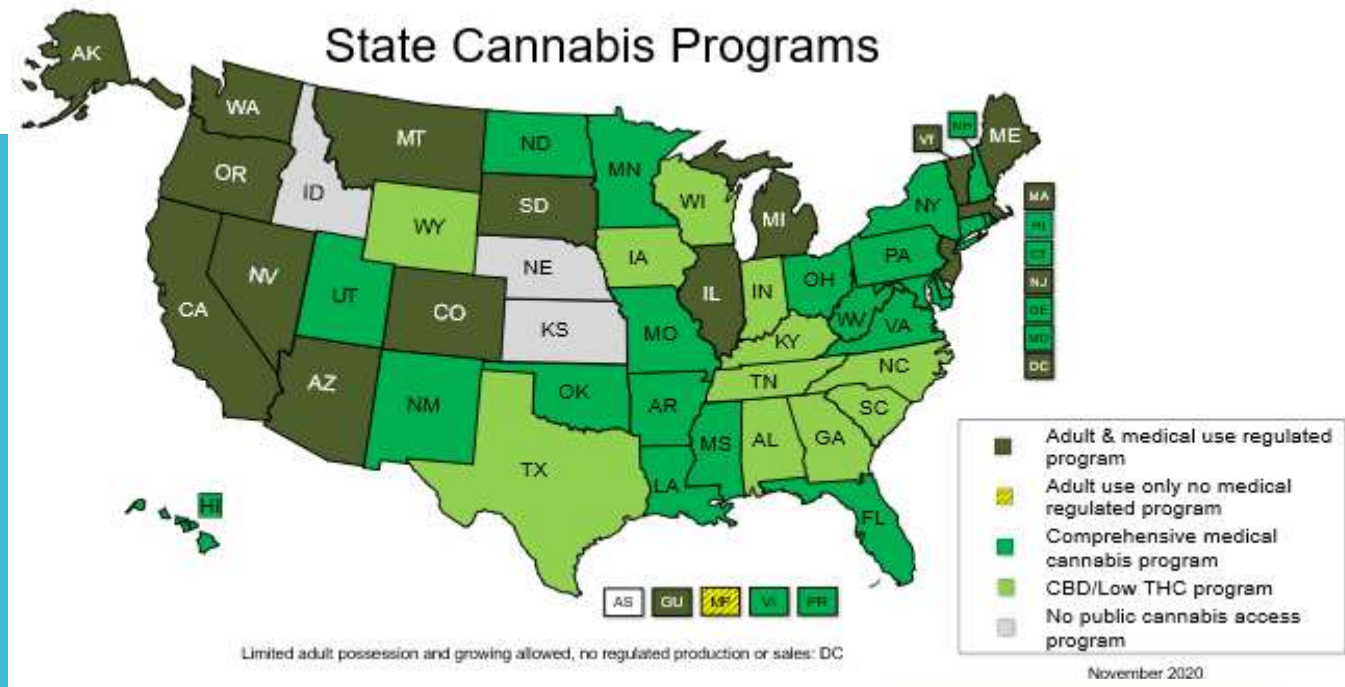


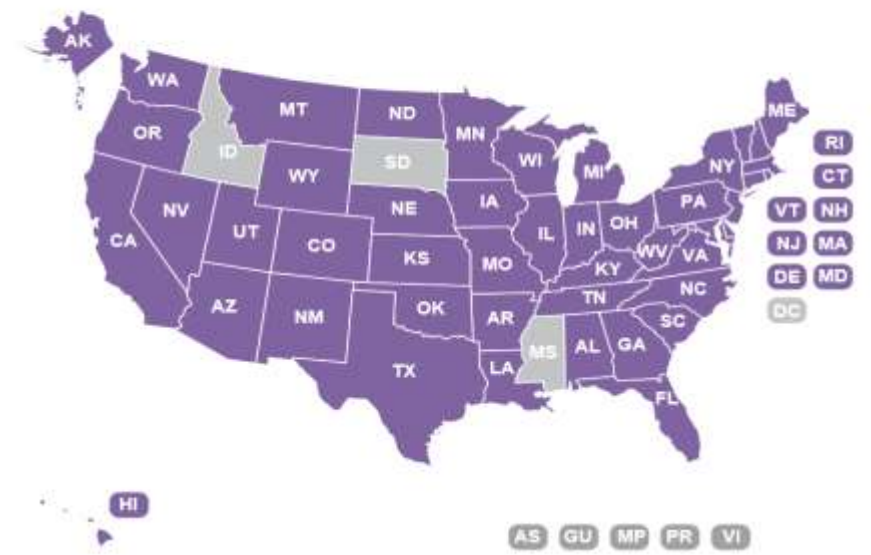
Challenges with Hemp Transportation

May 26, 2021



The Patchwork

Allows cultivation of hemp for commercial, research or pilot programs

Does not allow cultivation of hemp.


History

- **Agricultural Marketing Act of 1946**
 - Defines hemp as Cannabis Sativa L plant, its parts, derivatives, etc. with not more than .3% delta-9 THC by dry weight volume
- **2014 Farm Bill**
 - Also defined hemp and allowed state departments of agriculture and universities to grow and produce for research purposes under a state plan
- **Statement of Principles on Industrial Hemp – Federal Register, 2016**
 - US Dept. of Ag in consultation with DEA and FDA released a statement
 - Made clear that the 2014 Farm Bill did not change hemp’s status in terms of Schedule I
 - Only be grown for purposes of research
- **2018 Farm Bill**
 - Removed hemp from Schedule I
 - Allowed for states to submit a plan for primary regulatory authority for commercial cultivation
 - Provides that states and tribes may not prohibit interstate transportation
- **USDA Office of General Counsel – Legal opinion, May, 2019**
 - Clarified that 2018 Farm Bill allows for states/tribes to enact laws regulating **production** that are more stringent, to include prohibition on cultivation, but cannot prohibit interstate shipment through their state or tribal territory
- **Big Sky Scientific LLC, v. Idaho – 9th Circuit Court of Appeals**
 - Case was heard August 28
 - Court ruled against the plaintiff in that they must pursue the claim through state courts
- **USDA Interim Final Rule – October 2019**
- **USDA Final Rule Published – January 2021**

Comments on IFR for Final Rule Consideration

- Comments centered on the establishment of a clear, enforceable set of guidelines establishing validity of the load to include the following:
 - Requirements for how a load is certified that it meets appropriate THC levels prior to transportation
 - Uniform documentation to be presented at roadside
 - Specific packaging and labeling requirements
 - Requirements for sealing of the load

Final Rule

- A final rule was published in the Federal Register on January 19, 2021 and went into effect on March 22, 2021
- The final rule includes:
 - Regulations related to approval of state & tribal plans
 - Regulations related to a federal hemp plan for states & tribes that do not submit their own
 - Provides requirements for records retention and disposal on non-compliant plants
 - Established a “negligent violation threshold” – 1.0% or greater
 - Incorporation of remediation as an option for disposal of non-compliant plants
 - IFR placed burdens on state, local, tribal law enforcement

Transportation Considerations

- The heart of comments are reflected in the recommendations within in the FR
- “Transportation and Shipping Documents” (5648-5649)
 - USDA provides recommendation for transporters to carry copies of:
 - Producer’s license/authorization
 - Copies of lab testing reports
 - Bill of lading
 - Contact information for buyer and seller
 - Does not address labeling and packaging nor sealing of loads
- The FR does not adopt any requirements for interstate transportation beyond offering recommendations
- USDA specifically calls out their lack of jurisdiction
 - *“USDA is not adding transportation paperwork requirements to this rule because it does not have jurisdiction over common carriers or other types of transporters.”*

Next Steps and Best Practices

- Consideration of petitioning for rulemaking to incorporate USDA recommendations
- Best practice is to follow the recommendations outlined in the final rule:
 - Producer's license/authorization
 - Copies of lab testing reports
 - Bill of lading
 - Contact information for buyer and seller
- Engage with partners in enforcement and industry

Contact Information

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