



A Growing Opportunity in Hemp for Native American Tribes

For Native American Tribes, the Agriculture Improvement Act of 2018—informally known as the 2018 farm bill, now signed into law—opens a promising new door to economic opportunity: hemp. Specifically, the new law legalizes the production of industrial hemp, with certain controls, and gives tribes equal footing with states in seeking regulatory approval for hemp production.

A derivative of the cannabis plant, hemp has a low concentration of tetrahydrocannabinol-9 (THC), the psychoactive component of cannabis. However, it also has a high concentration of cannabidiol (CBD), which is currently being studied for its medicinal value and is already used in products ranging from fast food to cosmetics.

A landmark opportunity

For Native American Tribes and tribal producers, industrial hemp production marks a potential landmark economic opportunity. Historically, the United States has imported hemp because Cannabis, including industrial hemp, was classified as a controlled substance and not grown as a domestic crop. The 2018 Agriculture Improvement Act will help bring production back to the United States, promising significant economic value for Native Americans.

Currently, 30 countries grow industrial hemp as an agricultural commodity sold on the world market. Canada is the United States' primary source of food-grade hemp seed and oilcake, while China and some European countries are the major suppliers of raw and processed hemp fiber and yarn.¹

Hemp: Facts and figures



Hemp fiber is found in a wide variety of commercial and industrial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, and biofuel.

25,000

The number of products hemp is used in globally.

\$688 Million

The estimated value of hemp products in retail sales in the U.S.

Legalization of hemp production

Until relatively recently, hemp was included in the statutory definition of ‘marijuana’ and was thus classified as a Schedule I drug under the Controlled Substances Act of 1970. The 2014 Farm Bill authorized states to grow and cultivate hemp under pilot research programs authorized by state law. Since then, 41 states have enacted laws authorizing hemp production as part of research pilot programs.²

However, the 2014 act did not include pilot programs authorized by Native American sovereign communities. The 2018 Farm Bill goes much further than the 2014 act, permitting the production of industrial hemp as long as it has a THC concentration of less than 0.3% on a dry-weight basis and is produced according to a U.S. Department of Agriculture (USDA)-approved tribal or state regulatory plan.

To participate, a Tribal Government must submit a tribal plan for USDA approval. Among other requirements, the plan must encompass THC testing procedures; a process for disposing of plants with excessive THC levels; methods and policies for recordkeeping and enforcement; and attestation that the tribe has the wherewithal to ensure compliance with the plan.³

Tribes also can produce hemp without submitting a plan, but the USDA will assume regulatory authority over the production. Any hemp grown before the 2018 act became law is not considered to be legal product.

A still-evolving regulatory landscape

As the USDA Agricultural Marketing Services (AMS) arm formulates regulations for the 2020 growing season, provisions of the 2014 farm law have been extended to cover authority for hemp production. Until the USDA’s new regulations are finalized, tribes are at a distinct disadvantage vis-à-vis the states. The good news is that the USDA AMS expects to finalize the new regulations before year-end 2019.

Other issues will be more difficult to resolve. One is the question of jurisdiction. “Territory of an Indian Tribe” is not clearly defined in current regulations, an oversight that will create challenges for federal, state and tribal hemp regulators when they need to navigate the labyrinth of legal issues concerning tribal and state hemp plans.



As new USDA regulations are being formulated for the 2020 growing season, other issues will be more difficult to resolve. They include:

- **Jurisdiction—A clear definition of “Territory of an Indian Tribe.”**
- **Interstate commerce protections for tribal hemp products in transit.**
- **Production of hemp-based food products regulated by the authority of the U.S. Food and Drug Administration (FDA).**
- **Separation of industrial hemp from marijuana crops in states in which marijuana production is legal.**

Another critical issue is the lack of clear communications concerning interstate commerce protections for tribal hemp products in transit. At present, neither federal nor state law enforcement officials have the ability to scientifically determine the THC level of a hemp crop without the use of time-consuming laboratory testing. Lacking further clarification or a certification process, the need to ratify THC levels could lead to shipping delays or even unnecessary arrests.

Further confusing matters is the production and marketing of hemp-based products, such as cannabidiol (“CBD”), as dietary supplements—which are regulated by the authority of the U.S. Food and Drug Administration (FDA). Under this bifurcated regulatory scheme, hemp producers and processors across the board may face additional regulatory barriers to bringing hemp products to market.

Also important will be the separation of industrial hemp from marijuana crops in states in which marijuana production is legal. In those states, regulations vary as to how large a buffer zone should be to keep crops apart.

Financing hemp production and processing



For Native American Tribes looking to explore the industrial hemp opportunity, access to capital will be fundamental. Since hemp has not been a legal crop in the United States since 1970, traditional bank financing solutions are not established. Also, federally chartered lenders are waiting for regulatory guidance from the USDA, DEA and the U.S. Treasury to provide a basis for financial products aimed at hemp producers.

Since the hemp market is not yet established, lenders will be working to establish underwriting practices based on the cost of production versus the value of the output, and the degree of risk involved. Tribes will need financial services across the lifecycle of hemp production and processing, from commercial depository and payment processing services to financing for purchasing or leasing equipment and obtaining facilities.

Hemp production opportunities

A few Native American Tribes were able to establish approved hemp production plans under the 2014 farm bill, and are continuing with their industrial hemp ventures. Alongside these businesses, a few enterprising individual Tribe members have begun marketing hemp-related products.

Those Native American Tribes not already participating can act now to begin pursuing the economic potential of hemp. Those seeking to grow hemp can submit their production plans now, for example. Also, tribes can invest in aspects of the hemp industry other than crop production. By exploring their options, tribes can determine the best way to profit from the promise of hemp. Tribes interested in investing their cash in industrial hemp should pay close attention to their expected return on investment and tolerance for risk.

KeyBank Native American Financial Services

Key currently supports more than 70 Native American Tribes and corporations with a broad suite of financial services and products across sectors. As one of the first financial institutions to create dedicated teams serving this market, we have a deep understanding of the complexities each Nation faces. More importantly, we take the time to know you, the unique cultural characteristics of your Tribe, and what matters most.

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¹ Congressional Research Service Report, RL 32725, *Hemp as an Agricultural Commodity*, by Renee Johnson.

² [State Industrial Hemp Statutes](#), National Conference of State Legislatures.

³ “The 2018 Farm Bill and the Legal Landscape for Industrial Hemp Production in Indian Country,” University of Arkansas, March 2019.

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