

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2021-01

TRANSPORTATION OF HEMP

WHEREAS, the Agricultural Improvement Act of 2018 (“2018 Farm Bill”) was signed into law by President Donald J. Trump on December 20, 2018; and

WHEREAS, the Agricultural Act of 2014 (“2014 Farm Bill”) previously authorized certain limited hemp research pilot projects; and

WHEREAS, the 2018 Farm Bill provides that state laws regulating the production of hemp that are more stringent than the 2018 Farm Bill are not preempted (7 U.S.C. § 1639p(a)(3)(A)); and

WHEREAS, Idaho law prohibits the possession of hemp unless it is comprised of only the stalks of the mature Cannabis plant and contains 0.0% tetrahydrocannabinol (THC); and

WHEREAS, the 2018 Farm Bill allows for the United States Department of Agriculture (USDA) to license the production of hemp, as further defined in that law; and

WHEREAS, some western states, including some surrounding the State of Idaho, have instituted a research pilot project under the 2014 Farm Bill or are expected to allow production of hemp pursuant to the 2018 Farm Bill; and

WHEREAS, Section 10114(b) of the 2018 Farm Bill prevents states from prohibiting the transportation or shipment of hemp produced in accordance with Subtitle G of the Agricultural Marketing Act of 1946 (as amended by the insertion of Section 10113 of the 2018 Farm Bill); and

WHEREAS, the USDA recently promulgated interim final rules and regulations necessary to license hemp production under the 2018 Farm Bill; and

WHEREAS, Idaho law as currently written will likely conflict with federal law with respect to interstate transportation of hemp permitted by the 2018 Farm Bill now that the USDA interim final rules and regulations on hemp production have been published; and

WHEREAS, executive action is needed to assure that the laws of the State of Idaho are faithfully executed to protect the health, safety and welfare of the residents of this state from the illicit drug trade; and

WHEREAS, executive action is needed to temporarily resolve the conflict between state and federal law with respect to interstate transportation of hemp until a more permanent solution on interstate transportation and production is enacted by the Legislature; and

WHEREAS, the evolving landscape with respect to hemp necessitates a legal framework that is clear about the expectations of the State of Idaho with respect to the orderly transportation of hemp through our state and that is not overly burdensome on transporters.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me under the Constitution and the laws of the State of Idaho, do hereby order that Executive Order 2019-13 is repealed and replaced by this Executive Order; and that the State of Idaho permit, on and after October 31, 2019, the interstate transportation of hemp produced in accordance with the 2014 Farm Bill or the 2018 Farm Bill and the rules and regulations promulgated thereunder; and in so doing do also order that:

01. Any transporter of hemp shall have the affirmative duty to stop at the first port of entry encountered in the State of Idaho to declare the presence of any hemp.
02. Any transporter of hemp must present at the port of entry:
 - a. An affirmation from the driver that their vehicle contains no illicit drugs or variations of hemp not explicitly authorized by the 2014 Farm Bill or the 2018 Farm Bill;
 - b. Verification, including a copy of the hemp production license from the producer of the hemp being transported, that the hemp was produced by a grower or producer duly licensed by a state or Indian Tribe authorized to regulate hemp production under the 2014 Farm Bill or the 2018 Farm Bill;
 - c. A laboratory results report which confirms each lot of hemp being transported complies with the 2014 Farm Bill or the 2018 Farm Bill, as provided in 7C.F.R. §§990. 70(d) and 990. 71(d), and which was produced by a DEA-registered laboratory; and
 - d. A bill of lading, containing the shipment contents, origination, including lot number, and destination of the hemp, the weight of the load, and the type of vehicle hauling or transporting the hemp.
3. All receptacles, open or closed, of hemp being transported across Idaho must be labeled with the name and address of the producer, the quantity of the hemp, and the lot number to correspond with the above required documentation.
4. Any transporter of hemp shall consent to inspection of the shipment to ensure that the hemp complies with the 2014 Farm Bill or the 2018 Farm Bill, and shall further consent to randomly selected, reasonable-sized sampling of hemp for further off-sight testing by the Idaho State Police (ISP).
5. Once the hemp inspection is completed at the port of entry or roadside, transporters will be given an inspection report, confirming all required documents were presented and whether or not any samples of the hemp were taken. The inspection report must be presented upon request during any contact with a peace officer, as defined in Section 19-510I, Idaho Code, in the State of Idaho subsequent to the initial declaration at the port of entry or roadside.
6. Any transporters of hemp shall proceed through the State of Idaho avoiding any unnecessary delay because possession of any quantity of hemp other than for the narrow purpose of transporting across the State of Idaho in interstate commerce remains illegal in this state.
7. The Idaho State Department of Agriculture (ISDA), ISP and ITD shall promulgate such rules as are necessary to assure Idaho's compliance with the provisions of this Executive Order. I find that it is necessary that such rules become effective immediately upon adoption for the protection of the public health, safety, and welfare and in order to comply with the recently enacted USDA interim final rules on hemp. The ISDA, ISP, and ITD may contract with one another or any other department as may be necessary to efficiently carry out this Executive Order.
8. Nothing within this Executive Order or the corresponding rules adopted subsequent to this Executive Order shall authorize or be interpreted to legalize hemp, its byproducts, oils, or any other derivative prohibited by Idaho law. This Executive Order only permits the interstate transportation of hemp consistent with the 2018 Farm Bill and implementing regulations, this Executive Order, and the State of Idaho rules regarding the interstate transportation of hemp.
9. Nothing within this Executive Order or the corresponding rules adopted subsequent to this Executive Order shall authorize or be interpreted to apply to hemp transported in the State of Idaho prior to October 31, 2019. Failure to comply with any of the conditions of this Executive Order and the corresponding rules adopted subsequent to this Executive Order, may subject the transporter to the laws prohibiting marijuana under Chapter 27, Title 37, Idaho Code, and any other applicable civil and criminal penalties authorized by law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 11th day of January in the year of our Lord two thousand twenty-one.

BRAD LITTLE
GOVERNOR

LAWRENCE DENNEY
SECRETARY OF STATE