

within DEA's authority to serve as such a testing laboratory for private entities. Nor would it be appropriate for DEA to certify laboratories for these analyses. Manufacturers and distributors of "hemp" food and beverage products may, of course, conduct their own testing to determine to their own satisfaction that their products contain no THC. However, they are under no obligation to do so. Whether or not they conduct such testing, the law remains the same: if a food or beverage product contains any measurable amount of THC, it is an illegal schedule I controlled substance; if it contains no THC, it is a legal, noncontrolled substance.

Comments Regarding Drug Screening

Several commenters asserted that, in deciding whether or not to exempt THC-containing food and beverage products, DEA should not concern itself with the possibility that persons who eat such products then undergo drug screening might test positive for THC. Some of these commenters suggested that "hemp" food and beverage manufacturers have taken steps to ensure that the amount of THC in their products is low enough to avoid causing a positive drug screen. Given these comments, it must be emphasized that, while effective drug screening in appropriate circumstances is of concern to DEA and was part of the agency's overall consideration, the ultimate decision about which products to exempt from control did not turn on drug testing considerations. Rather, as explained above, DEA exempted certain products to the extent permissible by the CSA and consistent with the public welfare within the meaning of the Act.

Although drug testing was not the basis for the exemptions, in view of the comments about drug testing, it is worth reiterating that there are no uniform standards of what constitutes a "hemp" product. It cannot be said that, merely because a product has the word "hemp" on the label, it will necessarily contain a certain low amount of THC. Therefore, it cannot automatically be said that a food or beverage product marketed as containing "hemp" will never cause a positive drug test for THC. In fact, as noted above, one published scientific study found that eating "hempseed" salad oil (of a variety sold in "hemp shops" in Switzerland) did cause human research subjects to test positive for THC.

Comments Regarding the Cultivation of Cannabis for Industrial Purposes

Some commenters asserted that the United States should promote the

cultivation of cannabis for industrial purposes based on economic and environmental considerations. These commenters seemed to misunderstand the nature of the rules being finalized today. The rules do not impose restrictions on, or even address, the cultivation of cannabis. Rather, as the text accompanying the rules makes clear, the rules clarify which cannabis-derived products are controlled and which are exempted from control.

As stated above, it has always been the case since the enactment of the CSA in 1970 that any person who seeks to lawfully grow cannabis for any purpose (including the production of "hemp" for industrial purposes) must obtain a DEA registration. This requirement remains in effect and is not modified by the rules DEA is finalizing today.

Regulatory Certifications

Economic Impact of This Rule

This rule allows economic activity that would otherwise be prohibited. As has now been made clear under the DEA regulations being finalized today, all products that contain any amount of THC are schedule I controlled substances unless they are specifically listed in another schedule or exempted from control. Thus, without the exemptions provided in this final rule, industrial "hemp" products such as paper, rope, clothing, and animal feed would be subject to the provisions of the CSA and DEA regulations that govern schedule I controlled substances if they contained THC. The CSA permits the use of schedule I controlled substances for industrial purposes, but only under strictly regulated conditions. By virtue of this rule, however, most industrial "hemp" products are exempt from all provisions of the CSA and DEA regulations. Thus, this rule imposes no regulatory restrictions on any economic activities; rather, it removes regulatory restrictions on certain economic activities.

Regulatory Flexibility Act

For the reasons provided in the foregoing paragraph, the Acting Administrator hereby certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore, a final regulatory flexibility analysis is not required for this final rule.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and

Review, section 1(b), Principles of Regulation. This rule has been determined to be a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rule does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not likely to result in any of the following: An annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Accordingly, under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), this is not a major rule as defined in 5 U.S.C. 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this rule. However, a copy of this rule has been sent to the Office of Advocacy, Small Business Administration. Further, a copy of this rule will be submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

Paperwork Reduction Act of 1995

This rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.