



January 29, 2020

The Honorable Greg Ibach
Undersecretary of Agriculture for Marketing and Regulatory Programs
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

RE: Interim Final Rule U.S. Domestic Hemp Program

Dear Undersecretary Ibach:

As Farm Bureaus representing the Western states (Western states), we would like to extend our appreciation to yourself and this Administration for releasing the Interim Final Rule (IFR) for the U.S. Domestic Hemp Program. The Western states, in addition to the American Farm Bureau Federation, are heartened by the opportunity the IFR offers to explore the potential for hemp production and processing when grown by American farmers.

The release of the IFR will bring the historical state-by-state patchwork approach to hemp production under a unified model and to scale up the U.S. hemp market. Since the release of the Agricultural Improvement Act of 2014 (Farm Bill), the acreage in the United States dedicated to hemp cultivation has expanded 100-fold. This offers a unique opportunity for our farmers to diversify, utilizing new products and markets, and keep U.S. farming internationally competitive. While we appreciate the release of the IFR to develop a functional and prosperous hemp industry, as drafted, adjustments to the IFR are necessary. In that vein, the Western states have identified several areas for comment below.

The Western states request USDA authorize state departments of agriculture to determine appropriate testing laboratories for hemp. The Western states are very concerned about the requirement that only laboratories registered with the Drug Enforcement Agency (DEA) be eligible to conduct THC testing of harvested material. Currently, there are limited laboratories registered as such, and in some states, there may not be any. Based on the existing drafting of the IFR, they will serve as a significant bottleneck, disrupting the commercialization of hemp products. Moreover, the lack of access to in-state testing laboratories for hemp growers may create a de facto ban on production in certain states. For example, for those states that lack a DEA-registered laboratory, growers in those states will not produce hemp, as transporting potentially non-compliant samples, unbeknownst to the grower at the time, to a neighboring state, or across states that have international border checkpoints for testing may constitute a significant drug trafficking offense. For those states that do have an available laboratory, but they are in disparate areas of the State from growing regions, all farmers, but particularly small, rural or new and beginning farmers, will struggle to enter this burgeoning market.

The Western states disagree with the proposed 15-day sampling timeline and requires additional clarification. The IFR's proposes a 15-day sampling period, which will pose as a significant issue for the

commercialization of hemp as this timeline is prohibitively short. This limited time frame does not provide for the flexibility growers need to accommodate variable weather and pest conditions during this unpredictable season, which may require amendments to the anticipated harvest time. Moreover, under the existing paradigm, all statewide hemp samples will need to be collected concurrently, as most, if not all, hemp will be under similar harvesting timelines. This will overburden approved samplers and may inhibit the ability for growers to be compliant. It is also unclear if the 15-day time period begins once harvest is *initiated* or that may it start after it has been *completed*. If it is the former and sampling must occur before harvest is completed, 15 days is not an appropriate timeline to accommodate harvest, especially given the lack of mechanized harvesting equipment, the need for labor, or large operations.

The Western states request sampling include all portions of the hemp plant and that secondary compliance testing be a biomass sample. USDA's Sampling Guidelines state that samples shall consist of the top one-third of the hemp plant containing the inflorescence (flowering material). The Western states recognize that these are merely guidance to states, but this protocol will result in non-representative samples, as most of the THC content will be found in the flowering material. This presumes that the end use of the product will be produced from the flowering material only and fails to acknowledge uses of a plant's stalks for fiber, seed or alternative material, which may not be included in the proposed sample. Sampling of disparate parts of the plant ensures the sample collected will provide an accurate representation of the average THC concentration of the plant.

The Western states request discretion be offered to state departments of agriculture to determine proper disposal protocols for non-compliant hemp. The IFR proposes that material found to be non-compliant be collected for destruction by entities authorized by the Controlled Substances Act. The provisions of the 2018 Farm Bill did not explicitly authorize such "destruction," but rather requested USDA create a disposal protocol of noncompliant material. By destroying potentially hundreds of acres of non-compliant material, USDA is omitting the opportunity for the product to be disposed of on-site, as is the case for nearly all other agricultural waste. These practices may include composting, tilling the product under or repurposing harvested material to non-consumable uses such as fiber or textiles, on-farm uses, like animal bedding, or energy generation.

The Western states request re-evaluation of the 0.3% delta-9 tetrahydrocannabinol (Δ 9-THC) concentration defining hemp. While we recognize that federal statute, pursuant to the 2018 Farm Bill, clearly define hemp as the plant *Cannabis sativa* L. with a delta-9-THC concentration of not more than 0.3 percent on a dry weight basis, we respectfully request a scientifically based justification for that percentage. In the absence of such information, the 0.3% Δ 9-THC appears to be an arbitrary determination.¹ We recognize that any subsequent change requires statutory action, but as this determination is the basis of the distinction between lawful hemp and unlawful marijuana, we request further study.

Thank you for the opportunity to provide these comments. Please feel free to contact Taylor Roschen at the California Farm Bureau Federation at troschen@cbbf.com for further clarification or questions.

Sincerely,

Alaska Farm Bureau Federation
Arizona Farm Bureau Federation
California Farm Bureau Federation
Colorado Farm Bureau Federation

Nevada Farm Bureau Federation
Oregon Farm Bureau Federation
Utah Farm Bureau Federation

¹ Agricultural Improvement Act of 2018, Subtitle G, Section 297A. (1)