



NATIONAL HEMP
ASSOCIATION



**Official comments and recommendations on the USDA Interim Final Rule by the National Hemp Association.
January 2020.**

Administrator Bruce Summers
U.S. Department of Agriculture, Agricultural Marketing Service
1400 Independence Avenue, S.W.
Washington, DC 20250-0237

Re: Doc. No. AMS-SC-19-0042; SC19-990-2IR
Federal Register Vol. 84, No. 211, p. 58522, October 31, 2019 Establishment of a Domestic Hemp Production Program

Administrator Summers,

We first would like to thank the USDA for extending the comment period of the USDA Interim Final Rule (USDA IFR) and for this opportunity to comment on the IFR.

The National Hemp Association is a D.C. based non-profit, grassroots organization supporting tens of thousands of farmers, businesses and consumers. Together our representation and others like it have helped rebuild the hemp industry in our country. We have a vested interest in ensuring hemp's economic benefit impacts small and medium-sized farmers who form the backbone of America's rural and agricultural economies. The passage of the 2018 Farm Bill has brought hope and expectation that we now have the ability to bring to life all the potential of hemp. American leadership in hemp global industries will provide immense economic benefit for farmers, rural communities, and big industry while providing for increased sustainability of the products we all consume on a daily basis.

We have held listening sessions regarding the regulations set forth in the Interim Final Rule. We have recorded significant concerns, comments, and opinions from all links of the hemp supply chain and respectfully submit the following for your consideration. These comments and suggestions are strongly rooted around the reasonability and expectations surrounding the Farmer's role in growing the crop versus the Seller's role in offering a finished product for consumer use.

THC Testing

The single largest concern surrounding the IFR is the THC testing guidelines. What must be kept top of mind is farmers **want** to stay compliant. Creating rules that make one-tenth of 1% the difference between a farmer making profit or suffering a devastating loss is not conducive to a farming risk profile. One-tenth of 1% is not only a small number but applied and measured to a value that is subject to change from a variety of factors not in human control. Combine that with the short window of time between testing and harvest, the requirement to use a DEA certified lab, and the requirement is far above and beyond farm work. Add the precise manner in which samples are collected from unrepresentative portions of the plant, and this creates an environment that will make it extremely difficult for farmers to both remain compliant and be successful.

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MEASUREMENT OF UNCERTAINTY & NEGLIGENCE LEVELS

While the IFR does provide for each lab to calculate a small variance in the form of a 'measurement of uncertainty' which is likely to equate to only a few hundredths of a percent, this does not provide enough natural variability in production. Farmers want to be compliant, but such strict adherence a .3% Total THC requirement is overly burdensome. To have crops that test even at .35% after the measurement of uncertainty, especially when .5% has been marked as the level of 'negligence', is setting the farmer up for failure. It will also deter the experimentation of different varieties in different parts of the country when three negligent test results will lead to a suspension of the license. This research is essential to find what varieties work best in different climate zones and soil types as well as for the development of better genetics. The **level that is considered negligent should be no less than 1%** and **crops that test less than .6% should still be deemed compliant to be sold to a processor**. Processors with the ability to scientifically control THC levels and analytically measure them bear the obligation to ensure that end products that reach consumers are compliant with the .3% THC requirement. Additional and stricter guidelines could be created for the specific compliance of hemp to be sold as raw flower. Since most (80%+) of the hemp sold will be further processed, the burden for stricter compliance should not be on the farmer.

TIME BETWEEN SAMPLING AND HARVEST

THC levels do have the potential to rise towards the end of harvest making it important from a regulatory position to have limits between the time a sample is tested to ensure compliance and when the actual harvest takes place. The challenge becomes what is the right balance from a regulatory perspective, while also taking into account practical considerations such as weather conditions and logistics. The short 15 day window of sampling before harvest, combined with the requirement that samples only be tested by a DEA certified lab, will lead to almost insurmountable logistical problems. There is an inadequate number of DEA certified labs to be able to handle the number of tests that are anticipated to be required within a relatively short time period based on both the growing season and the 15 day requirement. Adding to the problem is the burden of extra costs that will be placed on the permit holder, as well as state level administrators. It is not clear at this point how much a DEA certified lab will charge for compliance testing versus a standard lab nor what the extra burden of cost born by state Departments of Agriculture will be to create certification programs and ensure there are enough authorized agents certified to be able to take the samples in a timely manner.

A solution could be to allow the permit holder to submit their target harvest date to the Dept of Ag 30 days prior to that target date. This would give ample time for a licensed sample collector to make arrangements to visit that farm 15 days prior to the harvest date to collect the samples. In the event that the sample collectors are unable to visit the grow site in that time frame, the lab is unable to return the results within 5 days, or in the scenario where adverse weather conditions or other extenuating circumstances prevent the farmer from harvesting on their target date, there should be a provision to allow for testing to be conducted post-harvest and prior to the crop leaving the farm. While field testing is the more ideal scenario from a regulatory viewpoint there can be a separate sampling protocol to ensure that representative samples can be taken from the harvested crop by requiring samples to be taken from each super-sack or other storage container.

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SAMPLING

How the crop is sampled plays a major role in the results. This difference in sampling can produce dramatically different results from the same plant, as can its impact on the analytical sampling. The scientific research from which the 0.3% D9-THC distinction between hemp and marijuana originated (Small and Cronquist, 1976) adopted that concentration specifically for “young, vigorous leaves of relatively mature plants as a guide to discriminating [the] two classes of plants.” The IFR provides the sample should come from the top one-third of the flower. THC levels are the highest in this part of the plant and impossible to retain in a commercial automated fashion required to farm large acreage. Biomass, which has many grades, is a composite of flowers, leaves and small lateral branches, and sometimes larger stems. This composite biomass is the most functional way for the industry to evolve and utilize all parts of the plant, versus an industry focused on cannabinoid value. A full plant composite sample is not only more forgiving to farmers, it also is a realistic representation of the THC levels of the product that is leaving the farm. Again, additional compliance testing could be added to flower material that is sold directly to the consumer.

A change in sampling to a full plant composite sample is the single most effective way to ease the burden and risk to farmers while maintaining tight regulatory control over hemp being introduced into the marketplace.

CROP DESTRUCTION

While it is our hope to see the regulations eased making the need for crop destruction much less likely, in the unfortunate event that destruction is required we oppose the requirement that the material must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized federal, state, or local law enforcement officer. Not only does this requirement add additional costs to an already suffering farmer that is facing crop destruction, it also adds the undue stress and stigma of having their farm descended upon by law enforcement. If hemp is to be considered a true commodity crop we need to move away from the perception that hemp is marijuana until proven otherwise. While a crop with slightly elevated THC levels may meet the strict legal definition of marijuana, in the real-world hemp would need to well exceed 2% or 3% to reasonably be considered marijuana or a diversion risk. The states are more than capable of overseeing destruction as they have done since pilot programs began. Taking this approach will reduce costs and prevent an unnecessary burden on law enforcement whose time and energy can be better utilized in our communities.

CONCLUSION

What is often overlooked in the process is the understanding of the intent of Congress by the passage of the 2018 Farm Bill. The language added to the 2018 Farm Bill that requires that testing be done post-decarboxylation was clearly to close the loophole where high THCa strains, that truly are ‘marijuana’, could be cultivated and sold under the hemp program. However, Congress had the opportunity to change the legal definition of hemp to be total potential THC, but chose to keep the legal definition as ‘Delta-9 THC’. This should give more flexibility in the testing protocol to create a

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program that both complies with the law while also adhering to the spirit and intent of the law, which is to have hemp be a widely grown commodity crop.

To quote our NHA Chair, Geoff Whaling, “This is a once in a lifetime opportunity. We will only grasp the staggering potential of hemp if we empower ALL people to participate, regardless of background. We need to get this right!”

We acknowledge that implementation of the hemp provisions of the 2018 Farm Bill is a challenging task for regulators as it touches many different federal and state agencies, farmers, businesses and the public and we appreciate the opportunity to express our concerns and make recommendations for improvement.

After speaking to our membership and representatives from all levels of government, we believe you will find repeated and unanimous concerns from stakeholders related to THC compliance via sampling and analytical testing. These concerns are further supported by the number of states that are opting to remain under the 2014 pilot programs. Due to the challenges in getting these rules right and the impact they will have, we encourage you to keep the testing requirements as guidance, and not a part of the final rule, for a period of three years.

We hope you will consider our comments and recommendations and make the adjustments needed to provide a more effective framework within which the industry can thrive.

Thank you for this opportunity to present our positions and for your consideration.

Best regards,

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