

U.S. Hemp Roundtable

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November 12, 2019

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

Dear Under Secretary Ibach:

On behalf of the U.S. Hemp Roundtable, the hemp industry's leading national business advocacy organization, we write to express our deep gratitude for joining us at our Fall Meeting in Nashville, Tennessee. Your extensive participation in our gathering is just one more example of your clear personal commitment – and that of your entire agency – to stakeholder outreach as this industry develops and blossoms.

The USDA's openness to hemp industry input was also clearly reflected in the recently released Interim Final Rule for the U.S. Domestic Hemp Program (the "IFR"). We appreciate the IFR's solicitation of meaningful public comment, and the U.S. Hemp Roundtable is pleased to take you up on that offer in this correspondence.

There are numerous elements of the IFR that we applaud. Specifically:

- As the IFR recognizes, the banking industry has been awaiting these regulations, as there have been numerous financial institutions that had previously viewed transactions with the industry as imposing a legal or regulatory risk. We are very hopeful that the IFR will serve as a strong signal to banks, credit card companies and other financial institutions that the hemp and hemp-derived CBD industry are safe, legal and open for business.
- The IFR formally establishes that interstate commerce involving hemp and hemp products is affirmed, and that neither federal nor state law enforcement officials can interfere with the interstate transportation of hemp or hemp products.
- We appreciate the flexibility the IFR provides to farmers and hemp companies on issues such as THC testing (providing compliance with a measurement of uncertainty), the potential for laboratory error in testing and sampling, and the opportunity to retest samples. We are also grateful that the testing and sampling guidelines were promulgated within policy guidance outside of the IFR itself, allowing the USDA to continually update and refine them when the industry presents new evidence, science or ideas.

Of course, as the IFR contemplates, there are areas where improvement will be welcome. Resolution of these issues could have a positive impact on the developing hemp market, as well as promote future innovation. These include:

- We disagree with the conclusion that a testing measurement of 0.5% THC or more should automatically be considered "negligence" – triggering potentially severe penalties. Particularly as the IFR requires the use of total THC as a measurement, the 0.5% standard does not allow enough room for unintentional error. We believe Congress intended "negligence" to be consistent with traditional legal interpretations of that term; to involve state of mind, not an arbitrary number.

- The IFR requires all non-compliant plant material to be destroyed. However, Congress directed no such destruction in the Farm Bill and, in fact, specifically directs *disposal* as follows, “(iii) a procedure for the effective disposal of—“(l) plants, whether growing or not, that are produced in violation of this subtitle.” We recommend that non-compliant parts of the plant to be permitted for use on the farm, with feedstock or fuel, with a prohibition of it on entering commerce with exceptions. Particularly in light of the tremendous value of hemp biochar as a soil amendment and for research and development purposes, we specifically suggest spelling out that pyrolysis is an acceptable means of effective disposal and the resulting char may enter into commerce.
- We are very concerned about the requirement that only laboratories registered with the Drug Enforcement Administration (DEA) can be qualified to conduct THC testing. We fear this limitation – and the additional potential that all labs must be LAP or ISO 17025 certified – could place an undue strain on labs, delay THC testing, and create long bottlenecks that could delay the industry progress. It could also place an undue burden on those states where marijuana is not legal in any form, and there is no DEA laboratory expertise to be solicited.
- The IFR’s requirement of 15-day sampling period could prove problematic. Not only does such a short period exacerbate the scarcity of lab issue mentioned directly above, it impairs state programs that currently have longer sampling periods.
- We appreciate the IFR’s openness to considering alternative sampling and testing methods, and we are hopeful that the USDA will soon approve methods other than gas or liquid chromatography.
- While we appreciate that THC testing will be reported with a measurement of uncertainty, there is some risk that a measurement of uncertainty could be abused. We understand from USDA that a measurement of uncertainty is scientifically defined and limited and that qualified laboratories are familiar with the parameters, but the parameters are not stated in the IFR.
- There is some internal confusion within the IFR about the process of sampling from the flower. Samples must be taken from the flower, but it’s unclear which *part* of the flower must be sampled. We would like to see more clarity that homogenized sampling is the preferred method because sampling only from flowering tops will cause more samples inappropriately to test “hot.”
- We understand the difficulty at the present time for the USDA to develop a seed certification plan; however, we are hopeful that when resources permit, the USDA will engage in that important effort
- We believe that the current application window – from August 1 to October 1 – does not provide farmers enough time to complete and submit their applications. We suggest that the deadline be extended until December 31.
- We ask for a clear statement that the USDA concurs that the exportation of hemp and hemp products is legal. The 2018 Farm Bill does not prohibit exports, and contrary to the IFR’s implication, there is current sufficient interest in exporting hemp and hemp products.

We will submit more formal public comments in the weeks ahead, but we appreciate your immediate consideration of the issues we raised above. Please do not hesitate to reach out to us with any concerns or questions of clarification.

Sincerely,

Jonathan Miller
General Counsel

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