



South Carolina DEPARTMENT OF AGRICULTURE

Hugh E. Weathers, Commissioner

December 20, 2019

The Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Perdue:

The South Carolina Hemp Farming program will enter its third growing season in 2020, and the South Carolina Department of Agriculture (“SCDA”) has been anxiously awaiting USDA’s regulatory guidance since the passage of the 2018 Farm Bill. After careful review of the USDA interim final rule for the establishment of a domestic hemp production program published in the Federal Register on October 31, 2019, we believe that several provisions in the interim final rule lack the flexibility necessary for our farmers to be profitable and for SCDA to be able to implement a successful hemp program.

The South Carolina Department of Agriculture has the following concerns with the current version of the interim final rule and would like to offer the following changes to address these concerns:

Sampling and testing requirements: The interim final rule states that “[a] State or Tribal plan must include a procedure for accurate and effective sampling of all hemp produced, to include the requirements in the paragraph (a)(2).” SCDA expects roughly 300 eligible farmer participants in the South Carolina Hemp Farming Program in 2020, growing a cumulative 3,000 plus acres. Without imposing a cap on the number of farmers we admit to the program or the number of acres grown, SCDA feels that it will be very difficult to meet these requirements without adding additional and reallocating existing resources and staff.

Additionally, SCDA has concerns regarding lab availability. The sheer number of samples required by the interim final rule will likely create a bottleneck effect on our labs. Even with the multitude of labs currently available, our farmers currently have real issues with turn-around times, and SCDA is dubious that the even fewer number of DEA-registered laboratories will have the capacity to complete the required tests in the necessary timeframe, given the strict 15-day pre-harvest window found in the current version of the interim final rule.

Recommendation: SCDA asks that USDA consider providing states with funding through cooperative agreements to carry out the testing and sampling requirement set forth in the interim final rule. Further, SCDA recommends that USDA revise the interim final rule so to allow for random and risk-based sampling of hemp farmers. This is a tried and

true mechanism used in many states with hemp programs and would allow states to devote finite resources to areas and varieties that are at the greatest risk of non-compliance.

15-day Pre-harvest Testing Requirement: SCDA has serious concerns about this very strict and rigid timeframe and the unnecessary burdens that it will impose on our state's hemp farmers. SCDA is very concerned that 15 days is an impossible obstacle for farmers to overcome and does not provide enough time before harvest to sample, submit samples, and receive a response, particularly if there are a limited number of DEA-registered laboratories with sufficient expertise to perform the necessary tests. It is likely that any farmer, of any crop, will tell you that it is unreasonable to expect a farmer to harvest a crop within a 15-day time frame window. Farming timelines are subject to uncontrollable weather factors. Frequently, farmers are unable to harvest due to natural disasters such as hurricanes or simply because it has rained too much to be able to get equipment in the field to harvest. The interim final rule as written will likely force many farmers, due to weather or other uncontrollable factors, to harvest and store their plant material before they receive compliant test results back which would force our farmers to expend money on plant material which would untimely be a total loss and subject to destruction.

Recommendation: The 15-day window is an unreasonable burden that needs to be adjusted to a 30-day window which has been adopted by almost all hemp cultivation states.

Testing Methodology: The 2018 Farm Bill requires testing for delta-9 tetrahydrocannabinol (THC) using "post decarboxylation or other similarly reliable methods." Reliable testing methods have emerged that do not necessitate decarboxylation to accurately measure THC concentrations. However, USDA's interim rule requires the testing of total THC stating that hemp samples must be tested using methods where the "THC concentration level reported accounts for the conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC." This requirement is inconsistent with the language in the 2018 Farm Bill that allows similarly reliable non decarboxylation tests to be used to measure delta-9 THC.

Recommendation: SCDA recommends that only delta-9 tetrahydrocannabinol should be tested for in hemp plants and the amount of delta-9 tetrahydrocannabinol-acid (THC-A) should not be considered.

Negligence Threshold: USDA's interim rule makes it a negligent violation if a farmer, even when exercising a level of care of that a reasonably prudent person would exercise, grows hemp that tests above .5% total THC. Further, if a grower is "negligent" three times in a five-year period, the grower will not be permitted to grow hemp for five years. SCDA believes this threshold is too low. The majority of the noncompliant results that SCDA sees are below 1% and we have no reason to believe that farmers with non-compliant samples below 1% are intending to grow a controlled substance.

Recommendation: SCDA believes that the limit should be increased to 1% THC before a farmer is subject to a negligent violation.

Sampling Top Third of the Plant: USDA's sampling guidelines requires that a sample should only be taken only from the top one-third of the plant, cut just underneath the flowering material. While SCDA agrees with the sampling of floral material only, we believe that sampling only the top of the plant does not provide a representative sample of the entire plant, which is harvested as a whole. Hemp, whether grown for fiber, seed or cannabinoids, is not utilized only for the top one-third of the plant.

Recommendation: Samples of floral material should be taken from the top, middle, and bottom of plant to yield a true representation of the plant's THC potential.

Thank you for the opportunity to provide input at such a critical time in the history of our nation's hemp industry. We hope that USDA will carefully consider all comments submitted. While we are appreciative that USDA clearly has put a lot of time and effort into the creation of the interim final rule, we are hopeful that USDA will be receptive to listening to state departments of agriculture that have actual experience implementing and administering hemp programs. Without changes to the interim final rules, SCDA will still be able implement and administer the program, but we are doubtful that our farmers will be able to be successful under such stringent rules. Our suggested changes are necessary to allow our South Carolina farmers, and farmers across the country to comply with hemp program requirements and still build a successful industry.

Respectfully,



Hugh E. Weathers
Commissioner of Agriculture