

January 29, 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:

I write on behalf of the South Dakota Farmers Union (SDFU) membership, a group of nearly 19,000 like minded family farmers and ranchers. It is my privilege to elevate the united voice of this group by submitting comments regarding the “Establishment of a Domestic Hemp Production Program” interim final rule (hereafter, “the Rule”). SDFU has been a steadfast supporter of hemp, in a state where this promising new crop has faced adversity and retaliatory veto.

Family farmers and ranchers in South Dakota are battling to be allowed the opportunity to diversify and expand our operations with hemp production. In light of our current situation we commend USDA on its swift issuance of regulations to provide guidance to producers, industry members, and others, in hopes to facilitate the growth of the hemp marketplace. We hope one day this marketplace will expand to our state. It is vital for the success of the hemp industry that the Rule provide regulatory certainty, no unnecessary barriers to market development and ensures fairness for family-scale operations.

While SDFU finds the Rule to be a broadly successful initial stepping stone for the hemp industry, we have outlined a few areas of concern regarding testing requirements and measures for handling non-compliant hemp crops.

I. Sampling and Testing Requirements

It is SDFU’s concern that certain testing requirements detailed in the Rule will prove difficult or impossible for family farmers to comply with. We encourage USDA to consider a different approach that may be viewed as more feasible and realistic.

A key issue is the requirement that within 15 days prior to anticipated harvest of hemp, samples must be collected for delta-9 tetrahydrocannabinol (THC) concentration level testing by a Federal, State, local or Tribal law enforcement agency or another designated person.

While the 2018 Farm Bill includes the general requirement that State and Tribal plans must incorporate procedures for sampling and testing hemp to ensure crops do not exceed the acceptable hemp THC concentration level of greater than 0.3 percent THC on a dry weight basis, the farm bill does not require this specific 15 day window for sampling and testing. Additionally, differences in the size of states will make traveling and testing in a timely manner more difficult in some states, and the effect of climate on THC levels will also differ state-by-state. Thus, states should be given more flexibility than a uniform sampling window allows.

More generally, we ask that USDA provide states greater flexibility in their testing and sampling regimes, at least during the period prior to the Rule being finalized in order to inform best practices in sampling and testing, or to help determine the different needs of states and best practices regarding sampling and testing. In addition to greater flexibility regarding the 15-day testing window, states should be offered greater discretion in determining which parts of plants to test, how to define a “lot” of plants, and to apply risk-based, or other methodologies that may be more cost effective than the testing regime required under the plan.

II. Non-Compliant Hemp Crops and the Negligence Threshold

We are particularly concerned with the requirements in section 990.27 and 990.3 regarding disposal of non-compliant hemp. Currently, in SDFU’s interpretation of the Rule, plants exceeding the acceptable THC level of 0.3 percent must be destroyed. The 2018 Farm Bill does not specifically require destruction or disposal of non-compliant hemp, instead permitting states to undertake a corrective action plan. ¹ SDFU believes greater flexibility should be allowed for salvaging non-compliant hemp than is outlined in the Rule.

It is generally understood that hemp containing as much as 1 percent THC would still have no psychotropic effect and no intoxicating potential, and some have pointed out that marijuana plants typically have THC levels 5 percent or higher.² Additionally, by USDA’s own estimate, of the 1,000 producers it expects to participate in a Federal plan, 400 will generate samples that will test high for THC content.³ Requiring up to forty percent of farmers to completely destroy or dispose of crops that may only be narrowly out of compliance without an opportunity for mitigation or correction is burdensome and costly when there might be reasonable alternatives. State corrective action plans that at least allow for crops to be partially salvaged might be explored.

¹ Agriculture Improvement Act of 2018, Conference Report. Pg. 431.

² Congressional Research Service. *Defining Hemp: A Fact Sheet*. R44742. March 22, 2019.

³ Federal Register, Vol. 84, No. 211, Thursday, October 31, 2019; Pg. 58547.

For similar reasons, we are also concerned about the 0.5 percent negligence threshold outlined in the Rule. USDA states in the Rule that it recognizes that hemp producers may be taking the necessary steps and precautions to produce hemp yet still produce plants that exceed the acceptable THC level. In part on this basis, USDA allows for hemp plants with up to 0.5 percent THC to not trigger a finding of a negligent violation. This threshold is still low and higher levels should be permitted without leading to a negligent strike, especially during the next several years while agronomic best practices are developed and refined for hemp cultivation.

III. Reporting Requirements

We support the requirement in the 2018 Farm Bill that states must create procedures for submitting information about hemp producers and hemp acreage to USDA in a timely fashion. In addition to this requirement, the Rule requires hemp farmers to report information directly to USDA; in particular, the Rule requires farmers to establish records with USDA Farm Service Agency (FSA) and to report hemp crop acreage with FSA. Such reporting requirements need to be defined more clearly. Therefore, we are concerned these reporting requirements may create an unnecessary barrier to growing hemp for some farmers. We ask USDA to reconsider these additional reporting requirements.

IV. Conclusion

As the largest farm organization in the state of South Dakota it is the duty of SDFU to make our members voices heard on the issues that impact them the most. For this reason we are grateful for the opportunity to submit comments to the USDA and hope our thoughts are reflected in the building of hemp policy that reflects the reality of what it is to be a family-scale producer.

On behalf of our membership, I thank you in advance for your consideration of these comments.

Respectfully,

A handwritten signature in black ink that reads "Doug Sombke".

Doug Sombke
President
South Dakota Farmers Union

