



January 29, 2020

Bill Richmond, Chief, U.S. Domestic Hemp Production Program
United States Department of Agriculture
1400 Independence Avenue, S.W., Stop 0237
Washington, D.C. 20250-0237

Re: Comments pertaining to USDA Interim Rule 84 FR 58522 Establishment of a Domestic Hemp Production Program

Mr. Richmond,

I am writing to you on behalf of the Minnesota Industrial Hemp Association, a non-profit trade association representing a broad coalition of businesses and individuals who advocate for the re-emerging industrial hemp sector from seed to sale. Specifically, we work on a non-partisan basis to ensure that opportunities for products derived from industrial hemp continue to grow and be readily available to consumers.

We appreciate the opportunity to provide comments regarding the United States Department of Agriculture's (the Department) *Interim Rule related to the Establishment of a Domestic Hemp Production Program*, as published in the Federal Register October 31, 2019.

As you are aware, industrial hemp provisions included in the *Agricultural Act of 2014* (Public Law 113-79) and the *Agriculture Improvement Act of 2018* (Public Law 115-334) provided the groundwork for producers to legally grow industrial hemp. The growth of industrial hemp as an alternative crop will continue leading to new marketing opportunities throughout the supply chain and prospects for the re-emerging industrial hemp sector show great promise, with some estimates projecting an \$80 billion market in just over a decade.

Minnesota's Industrial Hemp Pilot Program, administered by the Minnesota Department of Agriculture (MDA) has demonstrated substantial growth over the past four years. In 2016 there were 6 participants in Minnesota's hemp pilot program. In 2019 industrial hemp was grown on over 8,000 acres and over 4,000 indoor square feet throughout the state and is grown in 81 of Minnesota's 87 counties.

The 343 licensed hemp growers and 206 licensed hemp processors in Minnesota have become important participants in a re-emerging sector of Minnesota's economy and are prepared to play a leading role in advancing industrial hemp.

15-Day Harvest Window

Although the interim final rule recognizes the need for a window to allow for unforeseen circumstances at harvest, the 15-day window between testing and harvest as outlined in the interim final rule does not provide adequate flexibility to licensed industrial hemp producers. Myriad variables including testing backlogs, inclement weather, available labor, and equipment failures could easily interfere and make a 15-day harvest window extremely difficult to forecast.

The Minnesota Industrial Hemp Association concurs with the vast majority of the industrial hemp sector that a 30-day window would allow for much needed flexibility for licensed industrial hemp producers.

Sampling Guidelines

The interim final rule promulgated by the Department requires a THC sample from the flower or the bud located in the top third of the plant. This standard is more restrictive than specified in the 2018 Farm Bill and does not seem to adhere to legislative intent.

According to the Minnesota Department of Agriculture, the MDA's hemp inspectors have tested every hemp lot produced in Minnesota over the past four years. The test results have consistently shown that hemp grown for fiber and grain production has never tested above the 0.3% total Tetrahydrocannabinol (THC) limit mandated by Federal law.

Many producers are growing hemp for purposes other than cannabidiol (CBD) production. In light of these variants, the Department's sampling guidelines should include samples collected that are representative of the entire plant.

Compliance Testing

Compliance testing should strictly measure for Delta-9 Tetrahydrocannabinol (THC) as opposed to "Total THC". The Minnesota Industrial Hemp Association believes it is important that regulations create a clear and indisputable line between hemp and marijuana. Subjecting industrial hemp producers, however, to an arbitrary conversion rate of THCa to THC raises the risk of a non-compliance finding. Industrial hemp producers who act responsibly and utilize best available practices could be deemed out of compliance.

The Minnesota Industrial Hemp Association recommends the Department mitigate this issue by requiring either testing for delta-9 only or by raising the threshold to 1% THC.

Laboratory Approval

The provision in the interim final rule requiring approval by the Drug Enforcement Administration (DEA) in registering laboratories holds the potential to add unnecessary cost to implementation and could result in unintended consequences.

First, there is a dearth of DEA-registered laboratory capacity to meet the testing needs of most states' industrial hemp pilot programs. When coupled with the testing requirements and 15-day harvest window contained in the interim final rule, there is the very real possibility that the economic opportunities envisioned by the United States Congress would be stifled by unnecessary and costly regulatory burdens related to implementation.

The Minnesota Industrial Hemp Association is in support of oversight by local law enforcement. We have every confidence that states have the ability to maintain adequate procedures, training, and destruction

records that will meet the needs of law enforcement vis a vis laboratory samples that test above the legal threshold of 0.3%.

Enforcement

The Minnesota Industrial Hemp Association appreciates the difficulty in regulating a plant whose definition is dependent on the level of Tetrahydrocannabinol (THC). Any regulatory framework must strike a balance between maintaining the integrity of the industrial hemp market while enforcing the provisions of the 2018 Farm Bill.

The Minnesota Industrial Hemp Association appreciates and understands the myriad issues surrounding enforcement as outlined in the interim final rule. For the purposes of this comment period we would specifically like to highlight the issue of the negligence threshold.

Negligence Threshold

It is well understood by the agriculture sector and the Department that the THC content in a given plant can swing wildly, often in a genetic response to variable found in nature such as drought and other environmental factors.

Therefore, the 0.5% negligence threshold should be derived from a number that is based on sound science and at a level that protects hemp producers who act in a responsible manner and engage in best practices. In short, there should be a proper safe harbor for producers until quality genetics are developed by the market that best suit specific geographical locations.

Further clarity regarding the documentation used to determine the 0.5% negligence threshold would be beneficial to the industry. In the interim, a negligence threshold of at least 1% is in order.

Remediation

The Minnesota Industrial Hemp Association concurs with the Minnesota Department of Agriculture's assessment that state and tribal governments should be allowed to develop a regulatory process for remediation of plants that were grown for the intent of producing hemp but tested above the 0.3% total delta-9 THC limit. These plants should be allowed to enter commerce under a regulatory framework that requires remediation and testing to ensure final products meet the definition of industrial hemp.

Given the recommendation outlined above, destruction and disposal of non-compliant hemp should be used only as a last resort. Options for destruction of non-compliant hemp plants include such practices as mowing, disking-in the crop, or composting.

Certified Seed

Although the Department is currently not considering a certified seed program, the Minnesota Industrial Hemp Association believes such a program is warranted due to the risk and financial burdens being borne by producers. In addition, there are liability concerns due to unstable varieties in the marketplace.

2020 Growing Season

The Minnesota Industrial Hemp Association shares the concerns articulated by the Minnesota Department of Agriculture and other industrial hemp stakeholders that the October 31, 2020 deadline

to transition from pilot programs to plans approved by the Department is not practical. Minnesota's state hemp statute couples the hemp licensure period with the calendar year. In addition to causing confusion for industrial hemp producers, the two-month gap is not copacetic with Minnesota state law.

The Minnesota Industrial Hemp Association supports the recommendation of the Minnesota Department of Agriculture that the Department grant an extension to state pilot programs until December 31, 2020.

Thank you for your consideration of these comments. If you have questions or would like additional information, please contact me at info@mnindustrialhemp.com or (651) 247-5458. The Minnesota Industrial Hemp Association looks forward to working with the Department in moving the industrial hemp sector forward from seed to sale.

Sincerely,

Dave Ladd, President
Minnesota Industrial Hemp Association