

North Carolina Industrial Hemp Commission

December 19, 2019

The Honorable Sonny Perdue
Secretary, United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Docket ID AMS-SC-19-0042

Dear Secretary Perdue:

The Agricultural Act of 2014 made provisions for certain research institutions and state departments of agriculture to grow industrial hemp as part of an agricultural pilot program. In 2015, the North Carolina General Assembly passed Senate Bill 313 creating the North Carolina Industrial Hemp Commission to implement such a pilot program in our state. State law regarding the hemp program was modified in 2016 by House Bill 992. Under federal and state authorization, North Carolina has successfully implemented a compliant industrial hemp pilot program since 2017.

Membership of the North Carolina Industrial Hemp Commission includes diverse representation from agriculture, agricultural research, and law enforcement with members appointed by the state's Commissioner of Agriculture, Governor, Senate and House. As a commission, we adopted temporary rules for the North Carolina Industrial Hemp Pilot Program that have successfully provided governance for the cultivation of hemp in our state. Through state law, powers and duties of the North Carolina Industrial Hemp Commission include: establishing an industrial hemp research program to grow or cultivate industrial hemp in the state; and to issue licenses allowing a person, firm, or corporation to cultivate industrial hemp for research purposes to the extent allowed by federal law and upon proper application.

After reviewing the interim final rule issued by the Agricultural Marketing Service, USDA for the establishment of a domestic hemp production program published in the Federal Register on October 31, 2019, and given our experiences in implementing a pilot program, we believe that the proposed minimum requirements for state plans do not provide a framework flexible enough to "help expand production and sales of domestic hemp, benefitting both U.S. producers and consumers".

We wish to commend the United States Department of Agriculture for addressing interstate and international commerce as this guidance should help facilitate growth in the hemp industry. Additionally, we feel that the regional authority given to states and tribes should benefit growers and facilitate the ability to register crop protection materials for hemp.

Industrial Hemp Commission

Dr. Tom Melton, Chair Dr. Sandy Stewart, Vice-Chair
Guy Carpenter Chief Tony Godwin Billy McLawhorn
Sheriff Tim Manning Fen Rascoe Pat Short Dr. Guochen Yang

While some uniformity in regulating the industry is important, to date each state with a research pilot program has had the flexibility to create a flexible program that balances compliance with developing a new industry. Furthermore, we are disappointed that, as the body charged with implementing a hemp pilot program in North Carolina, neither the Commission or the North Carolina Department of Agriculture and Consumer Services were asked to provide feedback or share experiences with USDA that would have been beneficial in crafting this interim final rule.

We have significant concerns with the interim final rule as it is currently written, especially as it relates to our experience creating and implementing a compliant industrial hemp program in North Carolina through three growing seasons since 2017.

The proposed rule establishes a negligence threshold of 0.5% and provides that if a grower is considered “negligent” 3 times in a 5-year period, they cannot grow hemp for a period of 5 years. The interim final rule states that this number came from studying samples from several states. A negligence threshold this low will categorize many growers as “negligent” based on factors outside their control such as weather conditions and sampling protocols. A threshold this low will label growers as “negligent” based on a number determined by USDA and not based on science. We are also concerned that growers will also lose access to operating capital for being labeled as “negligent” based on an arbitrary number.

Based on our experience operating a hemp program in North Carolina, we have found that non-compliant hemp samples rarely exceed 1.0% THC. These non-compliant samples with THC levels > 1.0% often occur because of weather, production issues and/or other factors that spike THC levels. We do not feel that these growers have intentions of growing an illegal substance. We also have concern that growers who produce industrial hemp with borderline THC levels will face enormous economic losses in a program that is intended to stimulate the farm economy. Therefore, we respectfully request that a negligence threshold of 1.0% THC be adopted.

Requiring the sampling of all hemp produced is simply not feasible without significant additional resources to cover cost of additional staff. North Carolina currently has over 1,350 licensed hemp growers. This past fall, the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) tested 55% of the thousands of hemp fields planted across our state, with employees working up to 70 hours a week. It is impossible to ask this staff to do more and we are not aware of any state that has been able to physically sample each field. Additionally, the sheer magnitude of sampling volume during peak harvest periods would push the analytical limits of any laboratory testing THC levels. We respectfully request that USDA consider allowing states to perform random and risk-based sampling of hemp grown in their state.

The proposed 15-day pre-harvest testing window creates a very narrow timeframe for growers, creating another unnecessary obstacle for compliance. It is not unrealistic to think that growers may encounter weather or other constraints that may force them to harvest hemp

and store materials without knowing whether it is compliant or not due to inevitable delays in laboratory results because of high sample volumes. Based on our experiences in North Carolina, we do not think states will have the resources to receive notification from farmers, schedule sampling, perform sampling, deliver samples to an approved laboratory and receive results all within a 15-day window. This is an unrealistic expectation and we would like to discuss with any states who have successfully implemented this timeframe for all hemp being produced in their state as outlined in this interim final rule.

Additionally, the interim final rule would require all testing labs to be registered with the DEA. It seems unnecessary to have the testing labs be registered with the DEA since this was not required of pilot programs and may cause additional delays in sampling as laboratories seek certification.

Guidance documents provided on the USDA website outline instructions for collecting field samples for THC determination. These instructions specify that floral material should only be collected from the top third of the plant, we feel that sampling only a limited portion of the plant could potentially misrepresent the THC level present. We feel it is more logical to sample the entire plant because the marketable product comes from a composite of the plant and not just the top.

While we understand that there has been a tremendous amount of effort expended in establishing these interim final rules, we are disappointed in the lack of engagement with our state to help develop these rules based on experience creating and implementing a compliant industrial hemp pilot program in North Carolina. Without necessary changes to these rules we find it highly unlikely that any state or tribe will be able to submit a plan that meets all the required provisions. State flexibility is necessary to operate programs that ensure compliance and encourage the success of growers in a complex and developing hemp industry.

At this point, given the issues presented herein, instead of our state submitting a proposed plan for USDA approval, The North Carolina Industrial Hemp Commission is in full support of our state continuing to operate as an industrial hemp pilot program through October 31, 2020, or until a viable pathway forward is available to satisfy federal and state requirements.

Thank you for your consideration of the points outlined in this letter.

Sincerely,

A handwritten signature in dark ink that reads "Thomas A. Melton". The signature is written in a cursive, flowing style.

Dr. Tom A. Melton
Chairman