



January 7th, 2020

Commissioner Ryan Quarles
Kentucky Department of Agriculture
105 Corporate Drive
Frankfort, Kentucky 40601

Re: KYHIA concerns regarding the USDA, IFR, and KDA regulation of hemp farming

Dear Commissioner Quarles,

We are writing to share our concerns and the concerns of our growers about the USDA interim final rule (IFR) issued on October 31, 2019. Due to the number of uncertainties and the risk placed on the Kentucky hemp program, we ask that you consider extending the pilot program we have operated under, including the 2019 season until these uncertainties are made clear through Congress and USDA.

Hemp farming in Kentucky is still in its early stages and federal regulation of our farmers could have a serious detrimental impact on the Kentucky hemp industry if certain aspects are not addressed. We have reviewed the IFR and see several issues of serious concern and hope you will work with us to get the USDA to make improvements to the IFR as soon as possible. The specific issues include:

1. Testing of THC for compliance is a serious concern for KYHIA members. Our farmers invest thousands of dollars to grow hemp and all that investment is at risk if a crop is found to be out of compliance with the law. We appreciate the flexibility the IFR measurement of uncertainty (MU) provides on THC testing. However, we are concerned that variations of THC levels within a crop can be significant and this must be taken into account to ensure that a crop won't be destroyed on the basis of a sampling process that selects a tiny fraction of plant population. The USDA sampling procedure specifies taking a single plant sample when testing 1 acre or less. Given that a 1-acre hemp field would have anywhere from 2,000 to 30,000 plants, a single plant is a tiny fraction of the crop and is insufficient to provide a fair and accurate average of THC levels across the crop. In addition, THC levels can spike due to various reasons including stress, fertilization inputs and weather. THC levels can also vary due to inconsistencies in non-certified plant genetics that are prevalent in high CBD varieties.
 - **We recommend** USDA conduct or fund a study to determine MU of the sampling process. This is needed so that we can accurately report the MU resulting from the sampling process. Until this study is conducted, we recommend that USDA provide flexibility on acceptable THC levels by using a reasonable estimate of THC level variations.
2. The 15-day period between sampling and harvest is inadequate and unworkable. In the best-case scenario, 7 or more days will pass before the test results will be available. Crop harvesting cannot begin until the test results are received or the farmer risks paying to harvest a crop that must be then be destroyed. As you know, harvesting can take weeks due to the use of labor-intensive hand harvesting. Weather can also delay harvesting as the crop must be dry before harvesting.
 - **We recommend** that USDA regulations allow for at least 30 days between sampling and harvest.



3. IFR sampling procedure specifies only testing the top 1/3 of the plant. This does not result in an accurate measurement of the average THC levels because materials from the lower portion of the plant contain lower levels of THC than the top portions.
 - **We recommend** that in order to get an accurate average THC level, sampling must occur at the top, middle and bottom of the plant and the sample must be homogenized before lab testing.

4. The IFR requires all non-compliant plant material to be destroyed. However, the Farm Bill states nothing about destruction. In fact, the Farm Bill only requires disposal of non-compliant plants or plant material. The Farm Bill specifically states:
 - (2) CONTENTS.—A State or Tribal plan referred to in paragraph
 - (1)—
 - (A) **shall only be required to include—**
 - ...
 - (iii) a procedure for the **effective disposal** of—
 - (I) plants, whether growing or not, that are produced in violation of this subtitle; and (II) products derived from those plants;In our opinion, Congress did not intend to require destruction of hemp above the limit under the provisions of the CSA or it would have said so. The CSA requires incineration of plant material and special storage requirements that will place an undue burden on producers.
 - **We recommend** that USDA allow states to oversee disposal in any way that ensures that flower material is rendered non-viable.

5. We disagree with the decision that a delta-9 THC test result greater than 0.5% THC will automatically be considered “negligence.” We believe Congress intended “negligence” to be consistent with traditional legal interpretations of that term; to involve state of mind, not an arbitrary number.
 - **We urge** you to protect Kentucky hemp farmers by advocating for “negligence” to be determined by state departments of agriculture based on the facts and circumstances.

6. Genetics bringing in 4% or lower CBD levels on a homogenized basis are currently unmarketable to growers within this state and beyond. Currently, there are very limited (and unproven) genetics that guarantee the new mark of 0.30% THC.
 - **We recommend** the time necessary to prove hemp genetics. We are very close to those marks, but more time is required.

7. We urge you to reconsider KDA’s stance on “smokable flower” for our great state. Every hemp state surrounding ours has this provision, and Kentucky farmers continue to sell into these markets regardless of our state’s stance. Major tobacco interests are participating in nearby states, and to remain competitive, we should re-examine our state’s stance on this issue. Access to more markets for our farm product will stimulate new investments in procurement facilities and processing centers, which Kentucky needs. It is important to note that with USDA’s interim rule, there is no ban on smokable hemp products. They leave it open to interpretation of state provisions.



- **We recommend** reconsideration of KDA's stance on "smokable flower" to remain competitive with other states and keep crop money recirculating in Kentucky, adding to local tax collection within the Commonwealth.

Commissioner Quarles, many farmers and small businesses have expressed concerns to us over the recent months that these new rule changes and the speed at which new state guidelines are added is out of sync with the agronomics of the emerging hemp industry. It was evident from the speakers at the conference in Murray that this is a constantly changing conversation. Three newly anointed hemp states indicated they are going to adopt their plan from the 2014 Farm Bill, and New Jersey is complying with the 2018 farm bill (Marijuana Moment, Jaeger).

We hope that you will consider these concerns from Kentucky farmers and consider extending the pilot program, which has been working so well until these uncertainties are made clear and time has been taken to advocate for more positive changes with USDA.

The Kentucky Hemp Industries Association remains a strong supporter of KDA and we look forward to meeting with you in the near future.

Respectfully,

KYHIA Board of Directors

Mitchell "Tate" Hall, President

A handwritten signature in black ink that reads "Mitchell Tate Hall".

Jana Groda, Vice President

A handwritten signature in black ink that reads "Jana Groda".

Reference:

Jaeger, Kyle, 27, December, 2019 Marijuana Moment; <https://www.marijuanamoment.net/usda-approves-first-state-hemp-plans-following-crops-federal-legalization/>