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AMANDA E. BEAL
COMMISSIONER

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USDA Agricultural Marketing Service
Doc. No. AMS-SC-19-0042
SC19-990-2 I.
VIA EMAIL

Re: State of Maine Comments on USDA Interim Final Hemp Rules

Dear Sir/Madam:

The Maine Department of Agriculture, Conservation and Forestry thanks you for the opportunity to comment on the USDA AMS interim final rule, 7 CFR Part 990 Establishment of a Domestic Hemp Production Program (Rule). Maine has had a hemp program in place since 2016, beginning with one grower who harvested seed from less than an acre. This has since grown to 181 license agreements and over 2000 acres of planted hemp in 2019. Hemp is now grown in every one of Maine's 16 counties, and the varieties grown are thriving in all parts of the state. There has been a lot of support for and interest in this new crop by producers, private industry, the state legislature, and the Department. However, we are concerned that the requirements proposed by the Rules will require some major adjustments to the program that could adversely affect the growth of this industry in Maine. Below are our comments regarding how these proposed changes will impact the Maine program.

LABS

The Rules require that testing labs be registered with DEA. This may be cumbersome at best and impossible to meet at worst. In 2019, the Maine program switched to using one available private testing lab, which is not currently registered with DEA, because our state lab was unable to process samples. The private lab is ISO 17025 accredited, which is an important accreditation because it requires third-party assessors to evaluate the laboratory's ability to produce precise, accurate test and calibration data, and facilities are regularly reassessed to ensure technical expertise is maintained. ISO 17025 accreditation is more important to the state than DEA registration.

It is also unclear how many labs in Maine will seek DEA registration for hemp, or if they will even be available to test hemp samples. Maine just approved and is implementing a recreational

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marijuana program, and with the new push to find labs to test marijuana, labs may choose to focus on this crop and not hemp. Hemp testing labs will also need a DEA approved plan for disposal of non-compliant hemp, and those requirements are not clear at this time.

THC LEVELS

DACF is concerned that the USDA's requirement for a 0.3% Total THC level with no provision for mitigation does not allow for enough flexibility given the realities of the crop. This is not practical: many hemp cultivars are unstable and may fluctuate in THC content depending on soil type, climate, weather, pest infestations or other plant stress factors. Since the sampling procedures are "worst case" based and do not include plant material from the entire plant, non-compliant test results should be allowed to be mitigated. The 2018 Farm Bill under Section 297B e(2)(B) Corrective Action Plan appears to allow the state to develop corrective actions when a grower's hemp is found to be above 0.3% Total THC. The state's corrective action plan should be allowed to include grower requirements to extract from or process the entire plant as biomass when total THC levels are above 0.3% and below 0.5%. (Note that, ideally, Maine would prefer that the upper limit be 1% Total THC because the risk of anyone using that cannabis for the marijuana market is virtually non-existent.) Additionally, the extractor or processor could be required to assure the THC level of any product produced is diluted below the 0.3% threshold, and if any excess THC isolate exists, that it is properly disposed.

Currently, Maine law only requires hemp to be less than 0.3% delta 9 THC (not Total THC). Many of the CBD varieties currently grown will not meet USDA's new total THC threshold. If the USDA retains the 0.3% Total THC level with no allowance for flexibility, the likely outcome for growers would be significant lost investments and diminished market prospects for what limited varieties will qualify as hemp using this limit. The industry's growth prospects could be significantly reduced. We urge the USDA to allow for greater, yet manageable, flexibility in determining THC levels that can qualify as hemp with or without additional mitigation.

Another direction the USDA could take on defining what qualifies as hemp is to use taxonomic determination based on the genetic testing of known cannabinoid ratios of stable cultivars. Type III cultivars that are CBD dominant with a ratio of at least 20:1 CBD to THC are not psychoactive and produce high levels of CBD, which is one of the chief derivatives that hemp growers seek.

SAMPLING

Under the new Rules, the state will be required to sample every field and every area that has a different variety/strain growing, which will substantially increase the number of samples required to be collected. We believe that this is impractical. DACF currently collects one sample per license agreement, and some of our licensees have 15 – 20 different grow sites. This year there were 217 grow sites on 182 license agreements and multiple varieties grown on more than half of those sites. Had the new Rules been in effect for 2019, the number of THC samples would have increased from 182 samples to 300 or more. An additional complication for sampling is the requirement for the licensee or a designated employee to accompany the

sampling agent throughout the sampling process. This requirement, along with the increased number of samples, will make the state's sampling of all hemp lots within 15 days of harvest very difficult. Both of these added burdens will require additional FTEs to complete the sampling within the 15-day timeframe.

REGISTRATION

The Rules will require hemp farms to register with the USDA Farm Service Agency (FSA). While we understand that the potential benefit to growers for registering is possible financial assistance from FSA under certain future circumstances, we believe it could also be a significant barrier for small, less experienced growers who comprise the bulk of our licensees. Registration with FSA could discourage growers from becoming licensed because many of them are also medical marijuana growers and would not be favorable to registering their land with a federal agency. The state hemp program depends upon license fees to support the regulatory program. If too many growers are discouraged by this requirement, the program may not be self-sustaining.

BACKGROUND CHECKS

The requirement for background checks to exclude applicants with a felony in the last 10 years will be a significant change to the Maine program, which does not require such checks. Maine's original state statutes included a requirement for background checks, which were later deleted in the 2015 laws. This requirement will add another barrier for hemp growers who will be facing numerous new registration and reporting requirements under the Rules. Maine also has a statutory conflict with this requirement. 5 MRS Chapter 341 § 5303(1) only allows our agency to disqualify an individual from licensing on the basis of a criminal record for a maximum period of three years.

REPORTING

The Rule's monthly reporting requirements to the USDA AMS are extensive and will impose burdens on the state to implement. The state will have to develop a more sophisticated and costly database in order to fulfill these requirements. Further, because one of the monthly reports requires submission of geospatial location data, the state will have to amend the current licensing statutes that protect locations of hemp production sites as confidential information. The new reports will also require our current testing lab to change their report format and develop a process to notify the grower as well as the state of the total THC test results for each crop lot. Finally, the Rule requires use of a special license numbering system. Implementation of the new numbering scheme is an additional burden. All of these data and reporting requirements will increase the program workload and require additional state expenses.

DISPOSAL

Currently, when non-compliant hemp is found in Maine, the Department notifies local law enforcement and then the Department oversees grower destruction of the crop. The USDA's Rule changes this process so that if non-compliant hemp is found, the DEA or another entity authorized to handle marijuana under the Controlled Substance Act will dictate the process for disposal. Recognizing the time and effort that may be asked of these entities in disposal situations, the Department advocates that options for destruction include simple solutions such as mowing, disking-in the crop, or composting.

IMPLEMENTATION DATE

The Department is concerned that the USDA's approved plan implementation deadline of October 31, 2020, will seriously disrupt Maine and other states' current licensing schemes, to the detriment of growers. If growers' *state* licenses are void after that date, it could create a barrier for the licensee to sell their 2020 crop. For instance, if hemp is harvested prior to October 31, 2020, and was tested under the state's 0.3% delta 9 THC method, will that hemp no longer be allowed to be sold on or after October 31st? Further, due to the Rule's requirement that currently confidential grower data be reported to the USDA, the Maine legislature will need to make statutory changes to current Maine law. Given the state's legislative calendar, this may be impossible to achieve by that timeframe. We urge the USDA to rethink this deadline or provide for extended implementation dates, should states face legislative hurdles to comply. An alternative option would be to continue to operate state programs and gradually phase into the Federal program as milestones are achieved to comply with the Rule.

FEDERAL PROGRAMS AND AGENCIES

The Department is hopeful that these rules will establish a firm basis for Land Grant Universities to pursue hemp research without any threat of federal grant disqualification. The University of Maine's risk management department has not allowed university staff to conduct any research that requires handling of cannabis of any form. We also are supportive of providing hemp growers access to the USDA-FSA cost-share funding and the USDA-NRCS programs. The Department would support allowing new hemp farmers to access that funding and those programs even earlier than the current rules allow.

SUMMARY

The Department hopes these comments are instructive as the USDA determines how to move forward with implementing the Federal hemp program. As presented, these Rules will be challenging to implement for states with existing hemp programs and could threaten the future growth of the industry overall. The years of hands-on and practical experience that Maine, along with numerous other states, has had operating its hemp program should inform the USDA on how these Rules should be amended. Please don't hesitate to contact us if you have any further questions.

Sincerely,



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