NOFA-NY
NORTHEAST ORGANIC FARMING ASSOCIATION OF NEW YORK

October 8, 2020

Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program,
AMS, USDA,
1400 Independence Avenue SW, STOP 0237,
Washington, DC 20250-0237;

RE: AMS-SC-19-0042-4666
FR Vol 85, No. 174, Tuesday, September 8, 2020 Page 55363

The Northeast Organic Farming Association of New York (NOFA-NY) appreciates the opportunity to comment on the USDA/AMS Domestic Hemp Production Program, AMS-SC-19-0042-4666.

Founded in 1983, the Northeast Organic Farming Association of New York (NOFA-NY) is the premier statewide organization growing a strong organic and sustainable agriculture movement in New York State, and is part of a regional network of seven Northeast Organic Farming Associations. NOFA-NY provides education and assistance to local organic and sustainable farmers; connects consumers with organic and sustainable farmers; advocates policies that support a sustainable and fair food and farm system at both the state and federal levels; and is the largest USDA-accredited organic certifier in New York certifying over 1,000 organic operations in the state.

New York State is a top US producer of organic products, ranking third in number of organic farms nationwide, with over 1800 organic certified entities statewide. With one of the biggest marketplaces in the world in the New York City metropolitan region, New York participates in a large portion of the over $52 billion in organic sales nationwide.

NOFA-NY believes that the cultivation of Cannabis – hemp, medical, and recreational marijuana -- could provide an opportunity for additional profitability for New York farmers, and a business opportunity for craft producers (growers and processors) if protections are set in place at the outset of legislation.

While mostly a State legislative issue, NOFA-NY strongly believes that any legislation to legalize recreational marijuana and hemp production should make specific provisions to allow for the existence of multi-tiered participation in the industry. This necessarily must include both provisions for small growers as well as the ability for them to cooperatively associate to process and sell the product. Without the ability to process and sell, small holders will simply be a part of the Big Industry. These provisions should include:

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1. Specific set-aside for a pre-determined number of licenses for those who were adversely affected (incarcerated) by New York's previous unfair mandatory drug laws

2. Specific set-aside for a pre-determined number of licenses for "craft" marijuana cultivators – existing farmers and others who would grow under a pre-determined threshold (small holders). The threshold for "craft" cultivation would be determined by number of plants, surface area used for cultivation, or output by weight

3. Specific allowance for "craft" cultivators to associate in a marijuana cultivator cooperative to process and sell the product. There would be a limit on ownership of interests in the cooperative to guarantee that it is truly owned by "craft" cultivators.

    a. A reasonable fee for licensure as a craft marijuana cultivator cooperative which may be different from other licensure fees.

With specific regard to the Federal Interim Final Rule USDA/AMS Domestic Hemp Production Program, AMS-SC-19-0042-4666, NOFA-NY has some brief comments below, and fully supports the comments previously submitted by Hempire State Growers (shown in text in quotes), including:

1. **THIS RULE DOES NOT ADDRESS THE MOVEMENT OF WORK-IN-PROGRESS HEMP EXTRACTS IN INTERSTATE COMMERCE.**
   "There is a notable absence of a policy in the Interim Rule allowing for the movement of work in progress hemp extracts or concentrates in interstate commerce. This creates problems in interstate commerce for work in progress hemp extracts which was not addressed sufficiently in the Interim Rule to protect farmers and processors dealing with work in progress hemp extracts. There needs to be some protections for work in progress hemp extracts which all are eventually formulated down to compliant consumer products."

2. **TOTAL THC IS NOT THE APPROPRIATE TESTING STANDARD TO BE APPLIED**
   "The 2018 Farm Bill only requires testing only for delta-9 tetrahydrocannabinol and not "Total THC" as the interim rule requires. The interim rule introduced a new requirement, contrary to the specific language of the 2018 Farm Bill, that hemp samples must be tested using methods where the "Total THC" in hemp will now include THC-A. This is a non-psychoactive substance, and when included, will make it near impossible for farms to produce compliant hemp. Total THC should exclude THC-A. "Total THC Testing method," includes all the "potential THC" that a hemp plant could develop, and this test must also not exceed the level of 0.3%. Because a total THC test must be applied after the hemp has been decarboxylated," this chemical process transforms the THC-A (potential THC, or an acid that isn't psychoactive and not part of the delta-9 THC) effectively into delta-9 THC, thus raising the legal limit levels of the crop.

3. SAMPLES SHOULD NOT BE LIMITED TO FLOWER OR BUD LOCATED AT THE TOP ONE-THIRD OF THE PLANT

"The USDA sampling guidelines for hemp require a sample from flower or bud located at the top one-third of the plant (where CBD and THC concentrations are highest). For farmers to stand a fighting chance of continuing high content CBD production the sample should be taken from the top 8" of the plant and include all of the stem and leaf material (anything else would be non-representative). The 2018 Farm Bill does not dictate which parts of the hemp plant are required to be sampled. Testing the entire plant, stem, leaves and flower, has ALWAYS been essential for Hemp farming and in Hemp programs around the country. The original 0.3% THC limit (1976) was obtained by testing LEAVES, not flowers. Follow-up research (2004) demonstrated that flowers on their own can hit 0.8% THC. This is why representative sampling is appropriate--as opposed to concentrated sampling of flowers."

4. THE USDA'S 15 DAY PRE HARVEST WINDOW FOR TESTING IS IMPRACTICAL

"The USDA's interim final rule requires growers to test hemp within 15 days of anticipated harvest. Under current rules, the New York Department of Agriculture requires crop testing within 21 days of harvest. The 15 Day Pre Harvest Window isn't feasible. The logistics of commercially farming hemp make a 15 Day window unrealistic. We are very concerned that the 15 days is an impossible obstacle for farmers to overcome, and does not provide enough time before harvest to test, submit testing, and receive a response, particularly if there are a limited number of registered laboratories with the sufficient expertise to perform the necessary tests.

CBD farmers *want* to let their plants grow to where their CBD levels have been maximized (which also raises the THC levels but not above the previously established delta-9 limit). There is no way that farmers will be able to pass the total THC test that close to their harvest. Now farmers must harvest early, get paid perhaps at a loss, and will, consequently, sell an inferior product than they otherwise would have grown."

5. TESTING SHOULD NOT BE RESTRICTED TO DEA REGISTERED LABS

"Currently, New York hemp producers and producers across the country use independent labs to test crops. The interim final rules require hemp farmers to submit their crops to a Drug Enforcement Administration (DEA) registered laboratory for testing. This is concerning and impractical for 2 reasons:

- The 2018 Farm Bill gave the USDA and the Food and Drug Administration sole regulatory authority over hemp production. Hemp is a legal agricultural commodity and like all other legal agricultural commodities should not be subjected to prohibitive DEA regulations.

- Requiring DEA registered labs could cause tremendous bottlenecks and unnecessary delays for hemp producers in NY and across the country. Though there are numerous DEA analytical labs across the country that are registered, the DEA does not know how many of those labs are actually equipped or experienced in testing for THC."

6. THE NEGLIGENCE THRESHOLD FOR THC SHOULD BE GREATER THAN 1%

"Not only is the new USDA rule applying a Total THC test that farmers can't pass, but those who are shown as non-compliant must incinerate their crops (as anything above 0.3% of total THC will now be considered marijuana which is federally illegal and a class I controlled substance. Anything above total THC levels of 0.5% (which could still be at 0.3% of delta 9 levels) could be considered as intentional negligence and the farmer could potentially be convicted. We request that if a negligence threshold for THC must be set, the threshold be greater than 1%."

7. THE COST OF COMPLIANCE IS TOO HIGH

NOFA-NY supports the comments of New York Senator Charles Schumer regarding the onerous costs of both reporting and testing under these Rules:

"the cost of complying with the Rules has proven to be suffocating for the emerging industry. Compliance costs for reporting alone would be $17,363.40 according to USDA calculations, and testing would add over $700 per sample."

NOFA-NY supports the development of clear, transparent federal rules for the production of hemp by USDA. However, we believe that the Proposed Interim Final Rule on Domestic Hemp Production does not address the needs of all scales of farmers who are vital to this industry, and includes some unnecessary testing protocols and standards. We again note that in the maturation of a new agricultural industry such as hemp, protections to include a diversity of farmers is necessary to forestall the development of a monopoly by a few global players, which could thwart an important opportunity to New York's and to this nation's family farmers.

Thank You,

Liana Hoodes

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