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January 29, 2020

Via Electronic Submission: www.regulations.gov

Bill Richmond
Chief
U.S. Domestic Hemp Production Program
Specialty Crops Program, AMS
U.S. Department of Agriculture
1400 Independence Avenue SW, Stop 0237
Washington, DC 20250-0237

RE: Interim Final Rule / Establishment of a Domestic Hemp Production Program / Federal Register / Vol. 84, No. 211 / Doc. No. AMS-SC-19-0042 / 10-31-2019 / page 58522

Dear Mr. Richmond:

On behalf of the nation's community banks, with over 52,000 locations, the Independent Community Bankers of America (ICBA) writes to share our views regarding the USDA's Agricultural Marketing Service's (AMS) Interim Final Rule (IFR) titled "*Establishment of a Domestic Hemp Production Program*" as required by the 2018 farm bill.

ICBA believes the production of hemp could introduce a significant new market for our nation's farmers and ranchers and we appreciate USDA's careful drafting and review of these implementing regulations and the invitation to provide comments. ICBA's comments follow.

ICBA'S General Views on USDA's Hemp Regulation

No SARs Reports. From a general standpoint, ICBA appreciates that federal regulators have announced they would not require suspicious activity reports (SARs) from banks that finance hemp producers. This is appropriate since hemp is no longer a Schedule 1 controlled substance and thus no longer illegal.

Crop Insurance. ICBA also appreciates that USDA's Risk Management Agency (RMA) will offer a crop insurance product to help offset the risk to producers and their lenders of growing this new commodity. However, we believe the crop insurance program for hemp should cover those cases where a producer's crop may exceed allowable levels of THC and thus potentially be required by USDA to be destroyed.

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A hemp crop would be expected to exceed allowable levels due to adverse weather preventing a crop's normal maturity or preventing a farmer from harvesting the crop in a timely manner. The inability to mitigate against such weather related or other unforeseen risks could substantially reduce hemp production plans by producers and their lenders. As the IFR states, "*producers whose cannabis crop is not hemp will likely lose most of the economic value of their investment* (italics added) (pg 58524 *Federal Register*).

Ongoing Recommendations. ICBA appreciates USDA's invitation to offer comments to this IFR as this new program gets underway. However, since production of hemp will be a new endeavor for many producers and their lenders, we believe USDA should seek comments on an annual basis regarding the operation of the hemp program so that proper adjustments can be made as producers gain experience growing, harvesting, and transporting this crop. This would help ensure that the procedures outlined in the IFR will not be overly prescriptive to a degree that could diminish enthusiasm and markets for hemp production.

Testing & Sampling. The IFR requires a sampling deadline of 15 days prior to harvest. We suggest that harvest within 15 days of sampling only be a target for producers who may need to delay harvest due to unforeseen weather events or unavailability of official personnel to sample fields. Producers may need an additional month or more if adverse weather conditions persist.

Acceptable Test Results / THC Levels. The IFR states the acceptable hemp THC level is the application of the 'measurement of uncertainty' to the THC level producing a distribution or range that includes 0.3% or less THC. The testing results presented in the IFR seem problematic as some plants with a higher THC level above 0.3% would be considered hemp while other hemp plants with a lower THC level could be considered marijuana and thus not acceptable.

A buffer above 0.3% is necessary, regardless of the 'measurement of uncertainty' factor, particularly in the first few years of production as producers learn how to grow hemp that meets the federal guidelines and requirements. Producers should be able to retest if the THC level indicated is too high and an automatic buffer above the 0.3% level should be allowed if the producer made a good faith effort to meet the 0.3% level. At least initially, this buffer above 0.3% should be high enough to accommodate most producers seeking to produce hemp in accordance with this regulation.

Several commenters have questioned whether a 0.3% THC level is an appropriate mark to distinguish hemp from marijuana. It may be appropriate for USDA to study and report to Congress whether this level is scientifically defensible or whether it should be adjusted higher. Such a report recommending an appropriate THC level, which may require a legislative change, would be appropriate since USDA will submit annual reports to Congress on the hemp program.

Destroying Crops. We urge USDA to allow producers to not destroy their crops if it tests higher than USDA's permitted THC levels if the crop is not intended for human consumption purposes

and producers made a good faith effort to meet the 0.3% THC level and any buffer that USDA may allow.

Laboratory Approval Program (LAP). To respond to the question of whether a LAP should be established it would seem logical as producers may need to have labs as geographically close to their operations as possible, particularly when time is limited and demand for lab services may be high. We question whether the labs should have to be registered with the Drug Enforcement Agency (DEA) since hemp is no longer considered a controlled substance.

Producer Licenses. The IFR would provide producers a valid license for three years. We suggest this period be lengthened to five years to reduce paperwork requirements both on producers and USDA offices, which may face staffing shortages in future years. Alternatively, producers could be allowed to renew their licenses online indicating what if any changes have occurred since their previous license application.

Safe Harbor Clause. ICBA urges USDA's regulations to provide a "safe harbor" clause in terms of legal and regulatory liabilities for unforeseen occurrences related to the production of hemp. For example, lenders and other industry participants should not face any legal liabilities for financing hemp production or derived products that police or other state or federal officials state have tested with an unacceptable THC level even though initial testing showed the THC levels was satisfactory. Lenders should not be held legally liable for unforeseen or unexpected issues that may arise in the production, processing, marketing or distribution of hemp or hemp related products simply because they provide financial services to the hemp industry.

Conclusion

ICBA appreciates the AMS's issuance of an interim final rule with the opportunity for public comment. The introduction of a hemp program ushers in the potential for an exciting new era in production agriculture. However, as USDA's IFR states, "The future of the hemp industry in the United States (U.S.) is anything but certain (page 58539, *Federal Register*)." Therefore, we urge USDA to accommodate producers, their lenders and other industry participants to the greatest extent possible to help ensure that the production of hemp can truly ramp up and establish adequate marketing opportunities to secure a prosperous industry.

Thank you for considering our views. Should you desire to discuss the contents of this letter please feel free to contact our staff at: Mark.scanlan@icba.org.

Sincerely,

/S/

Mark Scanlan
Sr. V.P., Agriculture and Rural Finance