Submission of WVDA comments on USDA Industrial Hemp Interim Final Rule
1/29/2020

1.) The WVDA currently requires the licensee to notify the WVDA 30 days prior to harvest. WVDA believes the USDA Interim final rule’s requirement that harvest must be completed within 15 days after sampling will:

   a.) Negatively impact farmers (large farms, hiring labor, weather conditions)
   b.) Put a logistical strain on the WVDA representative to schedule and sample all lots.

2.) The WVDA would appreciate more clarification on the acceptable amount of hemp to cut when taking a sample. The WVDA’s current sampling method is to take the top 3-6 inches targeting hemp flower.

3.) In the “Violations and Enforcement” section, the USDA has described a “negligent” violation as above 0.5% but makes no mention of our current hearing procedures that would allow WVDA to evaluate a grower’s state of mind, in order to determine if a deviation from that standard is appropriate. The rationale is that the federal law speaks about states of mind (negligent and intentional), and a strict standard does not allow for that to be considered. THC levels for non-negligent, negligent (0.5% THC) and culpable mental state beyond negligence (1% THC).

   a.) WVDA would like to be granted flexibility to evaluate state of mind for growers before finding a negligent violation. WVDA has successfully utilized these inquiries in the past, inquiring as to seed selection, growing practices, aggravating or mitigating factors, etc., and believes that consideration of a grower’s practices, good faith efforts, and other factors is more appropriate for a state-of-mind determination.

   b.) The WVDA notes, there are a huge number of hemp varieties available for purchase, very few produced within West Virginia. There can be a considerable amount of variation in THC level between the region a variety is produced and the region in which it will be planted. Research facilities need to be able to experiment with different varieties to find what works best for their operation.

4.) The WVDA asks that the USDA provide more information on how the Measurement of Uncertainty can be calculated to encourage accuracy, precision and avoid competitive advantages between State and Tribal plans.

5.) The WVDA asks that “Key participants” be more specifically defined within the USDA Interim Rule. Many people could be considered to have “a direct or indirect financial interest in the entity producing hemp”. This could put an undue burden on that business to provide several background checks, as well as to the WVDA on determining whom must provide those background checks for licensing.