



## Submission of the WVDA comments on USDA Industrial Hemp Interim Final Rule

- 1.) The WVDA believes the USDA Interim final rule's requirement that harvest must be completed within 15 days after sampling will:
  - a.) Negatively impact farmers.
  - 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 the 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.) The WVDA would like to be granted flexibility to evaluate state of mind for growers before finding a negligent violation. The WVDA has successfully worked with producers in the past to determine if seed selection, growing practices, soil quality, aggravating or mitigating factors had an impact on THC levels. The WVDA believes that consideration of a grower's practices, good faith efforts, and other factors are 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 and hemp growers need to be able to experiment with different varieties to find what works best for our various climatic regions, soil conditions and growing practices.
- 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.
- 6.) The WVDA asks that all state hemp programs approved by the USDA are held to the same requirements in order to avoid competitive advantages between states. Additionally, the WVDA believes that all states, whether operating under USDA-approved plans or being regulated directly by USDA, should be held to the same standards and expectations, again to avoid any state gaining a regulatory competitive advantage.
- 7.) The WVDA encourages USDA to consider remediation plans for hemp found to be above the 0.3% total THC limit, to avoid the farmer incurring a total loss.