



September 11, 2020

VIA ELECTRONIC SUBMISSION

The Honorable Sonny Perdue  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

**Re: Establishment of a Domestic Hemp Production Program; Comment Period Reopened (85 Fed. Reg. 55363; September 8, 2020).**

Dear Secretary Perdue:

The Office of Advocacy (Advocacy) of the U.S. Small Business Administration submits the following comments in response to the reopening of the public comment period for the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) interim final rule titled: "*Establishment of a Domestic Hemp Production Program.*"<sup>1</sup> Advocacy urges AMS to extend the public comment period for a minimum of 30 additional days to allow for small businesses and their representatives to fully and meaningfully participate in this important rulemaking.

**The Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

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<sup>1</sup> Establishment of a Domestic Hemp Production Program, 84 Fed. Reg. 58522 (October 31, 2019).

<sup>2</sup> 5 U.S.C. § 601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).



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The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>6</sup>

## **Background**

On October 31, 2019, in response to the 2018 Agricultural Improvement Act<sup>7</sup>, AMS published an interim final rule establishing a domestic hemp production program in the U.S.<sup>8</sup> Because the agency chose to publish the action as an interim final rule, it is already in effect, and runs through November 1, 2021, or until such time that the agency publishes a final rule. The agency solicited public comments on the interim final rule until January 29, 2020.

On September 8, 2020, AMS published a notice in the Federal Register reopening the comment period for the interim final rule. The notice outlined several key features and policies within the rule for which AMS is seeking additional comments and information including the measurement of uncertainty for sampling, liquid chromatography factor, disposal and remediation alternatives, negligence threshold, procedures for interstate commerce, establishing an appropriate harvest window, treatment of hemp seedlings, microgreens, clones, breeding, and research, sampling methodology, and laboratory registration requirements.<sup>9</sup>

## **Request for Extension of the Public Comment Period**

Advocacy is concerned that the current comment period does not allow for small businesses to prepare the types of detailed analyses and data that the agency is requesting. The comment period currently runs from September 8, 2020 through October 8, 2020. Advocacy heard from several hemp producers in Arizona, North Carolina, New York, and Vermont, and state farm bureaus who are concerned about the length and timing of the latest comment period.

Producers indicated that the current comment period falls in the middle of the harvest season for much of the mid-Atlantic and southern hemp growers, excluding those who grow indoors. Because the harvest season is one of the busiest times for hemp producers, this places a strain on their ability to both manage their small business and dedicate the time and attention necessary to provide the detailed comments that AMS is requesting. Furthermore, because AMS is seeking comments on the

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<sup>4</sup> Small Business Jobs Act of 2010 (Pub. L. No. 111-240) § 1601.

<sup>5</sup> Id.

<sup>6</sup> 5 U.S.C. Sec. 601 note.

<sup>7</sup> Pub. L. No. 115-334. §12619(a)(2)(B) (2018). This Act removes hemp from the list of controlled substances and tasks AMS with establishing and administering a hemp production program in the U.S.

<sup>8</sup> 84 Fed. Reg. 58522 (2019).

<sup>9</sup> 85 Fed. Reg. 55363 (2020).

process as well various policies within the rule, it is prudent that the agency wait until the conclusion of the harvest period at which point producers will have a clear picture of how the process works from start to finish and can provide complete information about costs, production yield, and overall revenue.

Finally, the ongoing global pandemic as well as many other ongoing natural disasters nation-wide have presented additional strains and unique challenges to agricultural operations. Producers are experiencing delays in shipping and transport, labor challenges, and difficulty in managing familial obligations coupled with farming. Furthermore, pursuant to Executive Order 13294, agencies are instructed to address the economic emergency caused by the pandemic by removing regulatory barriers, and specifically with respect to small businesses.<sup>10</sup> It is imperative therefore that AMS offer additional leniency by allowing the public to have more time to comment on the interim final rule, and the various topics for which the agency is soliciting additional feedback.

### **Conclusions and Recommendations**

Advocacy urges AMS to extend the public comment period to allow for small businesses to meaningfully participate in this rulemaking process. The information that AMS is seeking is comprehensive and detailed and requires additional time and preparation. If you have any questions or require additional information, please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,

/s/

Major L. Clark, III  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Prianka P. Sharma  
Assistant Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

Copy to: Paul Ray, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

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<sup>10</sup> See Exec. Order No. 13924, 85 Fed. Reg. 3153 (May 22, 2020).