

Advocacy Comments on USDA's Reopened Comment Period for Interim Final Rule to Establish a Domestic Hemp Production Program

On October 8, 2020, the Office of Advocacy submitted comments to the U.S. Department of Agriculture's Agriculture Marketing Service (AMS) on its reopened comment period for its interim final rule to establish a domestic hemp production program in the U.S. The regulation includes provisions for maintaining information on where hemp is produced, as well as establishing testing methods, levels, and procedures for growers of the crop.

- The 2018 Farm Bill requires AMS to establish and administer a program to produce hemp in the U.S. On October 31, 2019, AMS published an interim final rule establishing a production program. On September 8, 2020 AMS reopened comments on the interim final rule for an additional 30 days to solicit additional data and feedback in advance of issuing a final rule.
- The rule specifies several requirements that must be incorporated in state plans, and some requirements that each individual grower must comply with. Key requirements of the rule are outlined below:
 1. Hemp samples must be collected and tested for THC concentration within 15 days prior to harvest.
 2. Testing of samples for THC concentration must be completed at a DEA-registered laboratory.
 3. The rule requires the "flower" of the plant to be tested only. Supplemental sampling guidelines issued by AMS suggest that only the top 1/3 of the plant is to be tested.
 4. The rule requires non-compliant crops to be destroyed.
- Advocacy is concerned about the potential effects the rule will have on small businesses if it is finalized without modifications. Advocacy made the following comments and suggestions to the agency:
 1. AMS should allow for remediation and on-farm disposal of non-compliant crops so that farmers do not experience a total revenue loss.
 2. AMS should lengthen the 15-day harvest window as it is too narrow, and simply unworkable for farmers.
 3. Testing should include more than just the top one-third of the plant as this better reflects how the plant will be used and ensures that there will not be an inflated number of hot crops.
 4. AMS should reconsider its measurement of uncertainty for sampling to account for variables in pre-sampling activities.
 5. The requirement that labs be DEA registered overburdens labs and farmers.

