



January 28, 2020

The Honorable Sonny Perdue  
Secretary, United States Department of Agriculture  
1400 Independence Ave, SW  
Washington, DC 20250

Dear Secretary Perdue,

The Oregon Department of Agriculture (ODA) plans to submit a state plan under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and to take full advantage of the opportunities to allow legal cultivation of hemp in Oregon. ODA recognizes the work the United States Department of Agriculture (USDA) put into establishing rules to regulate a federal hemp program.

Today, Oregon operates a pilot program under the authorizations of the 2014 Farm Bill. Oregon is currently one of the nation's largest hemp producing states.

It is imperative to have a workable federal framework for hemp that encourages opportunities and flexibility to support a viable industry for farmers in Oregon and across the United States. The current Interim Final Rules for Establishment of a Domestic Hemp Production Program (IFR) fail to meet this goal. Sections of the IFR identified below are unworkable and warrant further consideration:

- **Drug Enforcement Administration (DEA) approval of labs –**

Today, there are no labs in Oregon with DEA approval listed on the USDA webpage. ODA operates a state regulatory lab. However, this lab cannot get DEA registered because it works with cannabis plant material from sources not considered law enforcement by the DEA.

For the last two years, ODA and Oregon's hemp industry have worked in partnership with private labs for sampling and testing. Oregon's state hemp program requires that any lab be accredited by the Oregon Environmental Laboratory Accreditation Program (ORELAP). ORELAP is recognized by The NELAC Institute's National Environmental Laboratory Accreditation Program. ORELAP accredits qualified laboratories for testing under the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA) and the Safe Drinking Water Act (SDWA) and Cannabis testing under ORS 475B.550 to 475B.590.



This system works well for all stakeholders, including the state. The number of growers and grow sites requiring at least one sample, if not more, for 2018 and 2019 are listed in the table below. Some growers may split a grow site into two to four (2-4) samples depending on the location and how many varieties they are growing.

	2018	2019
<b>Growers</b>	584	1960
<b>Grow sites</b>	1441	6040

Oregon’s hemp industry will experience a major contraction in production without access to labs that provide quality and timely test results.

- **15-day pre-harvest window for sampling and testing –**  
The harvesting of hemp is primarily done by hand in Oregon and is time intensive. Given the lack of lab availability discussed above, unpredictable weather conditions, a limited workforce, and other dynamic factors outside of the growers’ control, a 15-day window is an unworkable constraint on Oregon hemp farmers.
- **Criminal negligence for preharvest tests above 0.5% THC –**  
As the hemp industry develops, it struggles with variable genetics, a research and knowledge gap of the cultivation practices, and a market incentive to produce plants with the highest levels of CBD possible. All of these variables in this new industry could cause growers to have pre-harvest test results above the 0.5% THC level without ever intending to.

These growers are not acting “intentionally, knowingly, willfully, recklessly, or with criminal negligence.” The potential of being charged with criminal negligence without intent, possibly due to circumstances outside of the growers’ control, exposes hard working family farmers to criminal liability.

- **Disposal of non-compliant plants –**  
Hemp crops that fail the required pre-harvest tests generally are not failing at levels that a reasonable person would consider viable as marijuana. Requiring the destruction of a non-compliant hemp crop, that would not be considered marijuana, by a person authorized under the Controlled Substances Act (CSA) is an extreme burden to a farmer who already has suffered an economic loss. This does not treat hemp as an agricultural crop.

The removal of plant material from agricultural land is a poor practice from an agronomy perspective. It also negatively contributes to the waste destruction and landfill pressures facing many local municipalities. Providing a legal framework for a grower to provide documentation of destruction to a regulatory agency is a reasonable requirement.

- **October 31, 2020 requirement for movement from 2014 Farm Bill to 2018 Farm Bill and IFR compliance –**  
Since 2015, ODA has operated under the 2014 Farm Bill pilot program. Hemp licenses, like all ODA licenses, are active for a calendar year.

Requiring states with current programs, to move to 2018 Farm Bill and IFR compliance on October 31, 2020 creates a regulatory burden for producers. This requirement also contributes confusion to an industry that struggles to understand what regulations apply and when those regulations apply.

To smooth the transition, ODA would like to see the USDA approve state plans with future implementation dates of January 1, 2021. This provides a clear cutoff and allows everyone licensed in 2020 to be treated the same regarding licensing and pre-harvest testing requirements.

ODA appreciates the opportunity to continue working with the USDA and participating in discussions regarding potential changes to the IFR which will continue to support Oregon's growing hemp industry.

Sincerely,



Alexis M. Taylor  
Director, Oregon Department of Agriculture

cc: Greg Ibach, Under Secretary, Market and Regulatory Programs, USDA  
Sonia Jimenez, Deputy Administrator, Specialty Crops Program, USDA

