GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT

GARY MCDOWELL
DIRECTOR

January 29, 2020

Mr. William Richmond
Chief
U.S. Domestic Hemp Production Program
Specialty Crops Program, Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

RE: Doc. No. AMS-SC-19-0042; SC-19-990-2IR

Dear Mr. Richmond:

The Michigan Department of Agriculture and Rural Development (MDARD) thanks the U.S. Department of Agriculture (USDA) for the opportunity to comment on the interim final rule to develop commercial hemp production and for its interest in establishing a domestic hemp program to provide regulatory consistency across the country. MDARD looks forward to working with USDA to develop and implement a strong industrial hemp program that's compliant with the intent of the Hemp Farming Act of 2018 and is economically viable for Michigan hemp growers and processors. To that end, we ask for your thoughtful consideration of our comments as outlined below.

Section 990.3 (a)(2)(i), (a)(3)(i) and (a)(3)(iii)
MDARD is concerned that the interim rule focuses too heavily on the involvement of the federal Drug Enforcement Agency (DEA) and the presumption that hemp will be non-compliant. Requirements such as the use of DEA registered laboratories, collection of samples by DEA authorized individuals and collection/disposal of non-compliant hemp by Controlled Substance Act (CSA) authorized individuals "because of the potential that hemp could be marijuana", is prohibitive given the typical concentration of THC found in non-compliant hemp. Case in point, approximately 16% of hemp samples analyzed in Michigan in 2019 were non-compliant and of these, the vast majority fell within a range of 0.4% – 0.6% THC. While technically considered non-compliant hemp, the THC concentration found was far from what is typically associated with or found in marijuana, which according to the United Nations Office on Drugs and Crime, "often contains 5% THC content, resin can contain up to 20% THC content and that cannabis oil may contain more than 60% THC content."

While MDARD recognizes that the requirement for a "measure of uncertainty" will help, the department encourages USDA to take an "innocent until proven guilty approach" and relax the DEA emphasis in the rule consistent with what typical hemp testing results show. We would ask that USDA operate under the assumption that hemp is being grown in compliance until it is determined to be non-compliant. At that point, depending on the concentration of the THC,

USDA could then identify guidelines for appropriate handling including realistic approaches to destroying an agricultural crop rather than an unrealistic approach more typically associated with prescription medicine drug disposal.

Section 990.3 (a)(3)(iii)(E)
As indicated above, USDA's interim final rule focuses heavily on the assumption that hemp exceeding the "acceptable hemp THC level" is marijuana and must be destroyed in accordance with CSA and DEA requirements. In doing so, the interim final rule fails to consider the many important and valuable industrial uses of this plant, including fabric, paper, plastic and construction materials that are viable options for hemp exceeding acceptable THC levels.

In addition, MDARD encourages USDA to consider factors outside of the control of conscientious growers such as drought, heat, cold temperatures and plant stress, that may cause THC levels to spike in a hemp crop. Requiring destruction as the only option could result in the complete loss of a crop, which could be financially devastating to Michigan's growers, who have dealt with several years of harsh weather and an unpredictable trade environment.

Minimizing this risk by allowing growers to redirect their non-compliant hemp to any one of the many industrial uses for this crop will afford peace of mind to our state's growers while fostering growth of the nation's hemp industry. MDARD strongly encourages USDA to work with DEA to re-evaluate the destruction-only option for non-compliant hemp and offer states the flexibility to allow for the redirection of non-compliant hemp to an appropriate market.

Section 990.3 (a)(3)(iii)(F)
USDA's interim final rules address the importance of accurate measurement of THC by requiring evaluation, establishment and reporting of a "measure of uncertainty" (MU) of the accuracy of the test. MDARD appreciates USDA's interest in ensuring accuracy; however, absent specific guidance on how large a MU can be, we are concerned that this will result in a patchwork of measurements across the country fostering "lab shopping" in search of the highest compliance range. MDARD encourages USDA to provide specific guidance in the rule as to how MU levels are established and how large they can be.

Section 990.3 (a)(2)(i)
USDA's interim final rules require growers to test hemp plants within 15 days of anticipated harvest. MDARD understands the desired goal of having a true measurement of the THC level at the point of harvest; however, we remain concerned that 15 days is an insufficient amount of time before harvest to collect samples, transport those samples to a lab, analyze the samples, communicate the results to growers and complete all harvesting activities. The personnel needed to collect and transport samples will be a difficult challenge to overcome, especially in such a condensed time frame. Likewise, lab capacity will be required in the same condensed time frame. Both challenges have the potential to negatively impact hemp growers and pose liability to state programs. MDARD encourages USDA to allow states the flexibility to determine a timeframe for sampling before harvest and harvesting after testing, which also takes into consideration factors such as inclement weather, labor shortages, and acreage planted by the grower.

The nation's early forefathers recognized the utility of this crop and we feel strongly that it's time that we do the same. Rather than recognize industrial hemp for its potential to be low THC marijuana, it is time we recognize industrial hemp for the value it can offer our nation's farming industry, our economy, the environment, and our health. The regulatory fear that hemp could potentially exceed a 0.3% concentration of THC and the unfair suspicion that it will be grown and used for illicit purposes must be balanced with the reality that all but three states have legalized Cannabis sativa L in at least some form or fashion. Throughout North America, the combined legality of hemp at the federal level, and marijuana at the state level, has resulted in many positive outcomes including, but not limited to, new business opportunities, job creation, increased state sales tax revenue, and improved quality of life. These positive outcomes far outweigh the perceived negative consequences of growing hemp that marginally exceeds 0.3%.

Thank you again for the opportunity to submit comments – I hope you will thoughtfully consider our concerns, and I welcome the opportunity to provide any additional input USDA may find helpful as we work to maximize the economic opportunities presented by hemp production.

Sincerely,

Gary McDowell

Gary McDowell
Director