



COLORADO
Department of Agriculture

U.S House Committee on Agriculture
Subcommittee on Biotechnology, Horticulture, and Research

RE: An Examination of the USDA Hemp Production Program

Thursday, July 28, 2022

Testimony submitted by:

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Colorado Department of Agriculture

In 2014, Colorado became the first state to administer a hemp program. In 2021, after many years of leadership and development in this space, Colorado continued our efforts to advance the hemp industry with the culmination of the Colorado Hemp Advancement and Management Plan (CHAMP). The CHAMP initiative, launched in 2019, was a collaborative, multi-month effort involving more than 200 stakeholders that included the Colorado Department of Agriculture (CDA), the Governor's Office, Department of Public Health and Environment, Department of Revenue, Department of Regulatory Agencies, Office of Economic Development and International Trade (OEDIT), Department of Public Safety, Colorado Commission of Indian Affairs, Department of Higher Education, local governments and industry experts. The [CHAMP Report](#) (see attachment) was published on March 26, 2021, and contained 21 key deliverables addressing the regulation of hemp across the entire supply chain, including research and development, seed stock, cultivation, testing, transportation, processing, manufacturing, marketing, and banking and insurance.

Additionally, the Colorado Hemp Program regularly engages stakeholders regarding the State Hemp Plan and rulemaking, holding four quarterly [Hemp Advisory Committee](#) (HAC) Meetings and two annual [Hemp Symposia](#). The HAC is a ten member committee composed of stakeholders, which has helped build the regulatory program in Colorado. The Hemp Program distributes quarterly newsletters, email blasts, and website information to hemp registrants and industry, including grant opportunities and industry and regulatory updates. CDA's Markets Division has surveyed the industry and is regularly connecting hemp-related businesses while promoting domestic and international trade. The Markets Division also regularly communicates with the Global Business Development team at OEDIT and the Governor's Office regarding ongoing priorities related to progressing this up-and-coming industry.

The hemp industry plays an important role in advancing Colorado's and CDA's goals of building economic and supply chain resilience, advancing voluntary stewardship, supporting the next generation in agriculture, and furthering animal health and welfare. Hemp has the potential to create new economic opportunities for farmers who are dealing with a changing climate and increasingly arid land. Our young farmers and ranchers are constantly seeking new ways to support their bottom line and the environment at the same time. The hemp industry has the potential to advance CDA's priorities if we listen to our producers and implement sensible regulations.

Following the 2018 Farm Bill, registered hemp acreage in Colorado increased sharply to 87,408 acres in 2019 from 1,800 acres in 2014. Beginning in 2020, hemp acreage dramatically decreased to the current 3,698 registered acres in 2022. The recent decline in acreage is largely due to the 2019 surplus production that has not yet been depleted. Other factors include the economic disruptions caused by COVID-19, additional states producing hemp post-2018 Farm Bill, and the fact that infrastructure for food and fiber production from hemp has largely not been developed.

Seventy percent of the hemp grown in Colorado through 2019 was for cannabinoid extraction, followed by 25% seed and grain, and 5% fiber and other industrial uses. Following 2019, cannabinoid extraction has decreased to 60%, with seed and grain remaining close to 25%, and fiber and other industrial uses (paper, plastics, hemp wood, and hempcrete) have risen to 15%. Surveyed hemp producers have cited the lack of a hemp market outside of cannabinoid production and not having the resources to convert to fiber production as primary barriers to entering new markets.

Since full implementation of the State Plan on January 1, 2022, CDA has had to adapt our program in numerous ways to meet the new requirements in the USDA Final Rule. CDA has expanded from 30% to 100% testing of all hemp lots, and approved 18 performance-based sampling plans, including research and disposal plans. Additionally, CDA ensures hemp producers register acreage with the USDA Farm Service Agency (FSA); completes monthly Federal reporting requirements; and has trained and certified 16 authorized samplers throughout the state to achieve 100% sampling of all lots. As a result, the enforcement and legal responsibilities for CDA have increased in order to provide customer service to support registrants, certified labs, and sampling agents with new requirements.

The 2018 Farm Bill placed many significant burdens on hemp producers, including much higher sampling and testing fees, completing required background checks, and FSA acreage reporting, which is duplicative in nature because it is already reported to the USDA through state reporting. Currently in Colorado, as in many other states, 100% of regulatory program costs are paid by producers through registration fees. Colorado is facing similar challenges as the states that have turned their programs over to the USDA in terms of making our program financially sustainable. This has included the challenges of fixed minimum regulatory costs with highly fluctuating registration numbers.

In July 2022, 74 hemp producers responded to a CDA Survey to assist the CDA Hemp Program in better understanding and supporting Colorado's hemp registrants. Some of the challenges identified by Colorado producers include registration and other fees, over-regulation, and the need to increase the allowable THC limit from 0.3% to 1.0%. Registrants also responded that more regulatory flexibility should be given to crops grown for fiber, seed, food, and feed.

In comments provided on the USDA's Interim Final Rule on January 29, 2020, and October 8, 2020, CDA requested that USDA provide flexibility as well as remove some of the requirements from the Final Rule. USDA staff have been very responsive to our concerns and requests for flexibility when they have the authority to do so. We greatly appreciate their partnership in this work. However, there are certain statutory changes that would provide the USDA greater flexibility and improve state-run hemp programs. Our recommended changes are:

1. Remove DEA requirements for testing labs.

The USDA's Final Rule requirement for hemp testing laboratories to be DEA registered should be removed as it is time-consuming, inefficient, and unnecessary. The requirement is too cumbersome and takes too long to implement. As soon as the IFR was promulgated in October 2019, CDA initiated the process of obtaining DEA certification for its state-of-the-art laboratory. Even though the CDA laboratory had been performing testing and analysis of cannabis samples in support of Colorado's cannabis-related regulatory programs for many years, up until this hearing, CDA still awaits DEA approval. Based on our experience in seeking approval at the state laboratory, we worry it may take years for other laboratories to obtain DEA certification, which will create a testing capacity problem in Colorado.

2. Allow the use of certified seed as an alternative to the strict testing requirement.

Plant varieties are developed by plant breeders and are protected by the Federal and State Plant Variety Protection Act and Regulations. These varieties are known to have Distinct, Uniform, and Stable characters and are multiplied and marketed as certified seeds under the protection of the Federal and State Seed Act. As hemp varieties are developed with acceptable THC levels, the same system that has served other plants should serve to protect and certify the identity of hemp. A grower who uses certified hemp varieties should not be regularly tested for THC since THC compliance is certified with a seed certification system. This will significantly reduce the cost of operations and encourage farmers to adopt stable genetics that produce consistency in the industry, helping several facets of the industry simultaneously - both farmers and those engaged in seed and genetic development.

3. Remove background check requirement.

The 2018 Farm Bill has paved the way for hemp to be grown as an agricultural commodity. Farmers have the opportunity to benefit from its multiple potential uses and enable diversity in their choice of crop. Over the last seven months of

implementing the USDA program, we received consistent pushback from farmers and growers over the background requirement. The requirement added cost, required time until we receive results, and added an extra process of notifications putting strain on already small program resources. Additionally, the background provision prevents those that have completed their rehabilitation from participating in growing a legal agricultural commodity.

4. Establish a federal grant program to support the state's hemp program.

As a result of requirements in the 2018 Farm Bill and the USDA's Final Rule, the hemp industry is highly regulated with intensive data collection, background checks, land registration, sampling, testing, inspection, enforcement, and reporting requirements. A majority of state programs, including CDA's program, are cash funded, meaning we depend on the revenue collected from registration fees to provide the services. Hemp registration is at its lowest level since the program's creation, generating significantly less revenue and making our ability to continue to run the program into the future more tenuous. As of this hearing, several states have closed their program. With the current registration trends, more states are likely to close their programs due to loss of revenue, putting more pressure on USDA to take over the regulation in those states and threatening the sustainability of the program. The USDA should be charged with establishing a program to financially support States that have implemented hemp regulatory programs much the same way the USDA does for other federal requirements implemented by the States. States like Colorado are implementing federal requirements and taking this regulatory burden off of the USDA without financial compensation.

5. Accelerate the regulatory process to allow the use of Hemp as feed.

Scientific research has shown hemp to have promising nutritional benefits to livestock and pet animals. Studies are still ongoing to demonstrate the safety and efficacy of hemp as a feed ingredient. Colorado stakeholders have worked for years to demonstrate safety and effectiveness through collaborative research and numerous discussions on how to develop a national path forward to safe and legal approval. Providing federal support for research is necessary to ensure that the industry can demonstrate the safety and effectiveness of hemp as quickly as possible through the FDA's rigorous review process. FDA approval of hemp as feed will immediately open significant new market opportunities for hemp producers as well as provide a new, sustainable source of animal feed to large feed and pet food manufacturers.

Colorado is a leader in the hemp industry because our agricultural producers are entrepreneurial, and those dedicated to supporting the industry are driven to see it succeed. Stakeholders from across the industry and state government came together to develop the key deliverables in the CHAMP Report with the goal of promoting the health and safety of the hemp industry for farmers, processors, and consumers. The State of Colorado is doing everything we can to support our hemp producers and invest in a vibrant, resilient future for Colorado agriculture; however, Colorado's vision for our hemp industry cannot be realized without changes in federal statutes and regulations.

Attachments:

Colorado Hemp Advancement and Management Plan Report