

The Hemp Economic Mobilization Plan (HEMP) Act:

Senator Paul's Plan to Relieve Constraints on the Hemp Industry and Provide Hemp Farmers Transparency and Certainty

BACKGROUND:

The 2018 Farm Bill removed hemp testing below 0.3% Delta-9 tetrahydrocannabinol (THC) from the definition of “marijuana,” thereby delisting hemp from the Controlled Substances Act. The Farm Bill also provided for the destruction of hemp crops testing above the THC limit and gave sole authority to USDA to develop all rules and regulations for the cultivation of hemp. In January 2021, USDA issued its final rule for hemp production. While it took into consideration some comments submitted in response to the interim final rule, many of the concerns of Kentucky hemp farmers and processors, as well as the American Farm Bureau Federation (AFBF), remain.

SENATOR PAUL'S PROPOSAL:

- **Amend the definition of “hemp”:** The Farm Bill directed States and Tribes who regulate their own hemp, as well as the USDA, to develop a plan for the destruction of hemp not meeting the legal limit.¹ Unlike the interim final rule (IFR), the final rule provides for certain remediation measures so farmers are not at a total loss², but this is not enough. *This problem could be remedied by changing the statutory definition of hemp, raising the THC limit from 0.3% to 1%.* This raising of the THC limit has been championed by Kentucky hemp farmers and processors, key Kentucky hemp stakeholders, and the AFBF.
- **Require testing of hemp-derived products rather than the hemp flower or plant itself:** The final rule provides that 30 days prior to the anticipated harvest, a Federal, State, local, or Tribal law enforcement agency is to collect samples from the flower material for testing.³ While this is an improvement upon the IFR, which only allowed for a 15 day testing and harvesting window, farmers are still concerned this is too short a time frame and does not take into consideration potential testing backlogs, lack of personnel to collect samples, and the time it takes to harvest. The THC content of hemp plants is significantly impacted by environmental factors, which farmers cannot control. Alternatively, hemp processors have greater control over the THC content in their products. *Providing a statutory fix to this problem, by testing the final hemp-derived product rather than the hemp flower or plant itself, would ease the burden on farmers.*
- **Require the inclusion of a producer's hemp license copy, or lab certificate copy certifying the hemp contains no more than 1% THC on a dry weight basis, when transporting hemp:** Shortly after the 2018 Farm Bill became law, shipments of hemp were seized by law enforcement under suspicion of being marijuana. *In order to protect legitimate hemp farmers, processors, and transporters, a copy of a producer's hemp license, or lab certificate copy certifying the hemp contains no more than 1% THC on a dry weight basis would be included in hemp shipments.* Such documentation would also allow law enforcement to quickly determine the producer is legitimate or that the hemp has already been laboratory certified as compliant with law.
- **Create transparency and certainty by defining a margin of error in hemp testing:** Neither the law nor the interim final rule provides a margin of error for hemp THC testing. The interim rule states DEA approved labs, which conduct the testing, are to set “measurements of uncertainty” (MU), but give no parameters for the MU.⁴ *The interim final rule used the example of +/- 0.05%, and Senator Paul proposes using 0.075% as the baseline standard MU, giving farmers and processors the certainty they have requested.*

¹ 7 USC §§ 1639p(a)(2)(A)(iii) and 1639q(a)(2)(C).

² 7 C.F.R. §§ 990.3(a)(6) and 990.27(b-c) (2021).

³ *Id.* at §§ 990.3(a)(2)(i), and 990.24(a) (2021).

⁴ *Id.* at §§ 990.3(a)(3)(iii)(F), and 990.25(f) (2021).