

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, which became law in December 2018, delisted hemp from the Controlled Substances Act, thereby legalizing it, when it removed hemp testing below 0.3% Delta-9 tetrahydrocannabinol (THC) from the definition of “marijuana.” 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 October 2019, USDA released its interim final rule for hemp production. This rule, and the state hemp plans developed from it, resulted in three main concerns from the hemp community, Kentucky hemp farmers and processors, as well as the American Farm Bureau Federation (AFBF). These concerns include: (1) destruction of hemp crops testing above 0.3% THC; (2) the short time frame for testing and harvesting hemp crops; and (3) lack of transparency for a margin of error in hemp testing.

SENATOR PAUL’S PROPOSAL:

- **Amend the definition of “hemp” from 0.3% to 1% THC:** Under current laws and regulations, hemp crops testing above 0.3% must be destroyed.¹ *This problem could be remedied by changing the statutory definition of hemp, raising the THC limit from 0.3% to 1%.* Raising 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:** Farmers have stated the 15-day timeframe for harvesting and testing hemp crop’s THC content in USDA’s rule 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 and manufacturers 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 seed certificate copy when transporting hemp from farms to processing facilities to certify the hemp was grown from seed containing 1% THC on a dry weight basis:** Not long after the 2018 Farm Bill was signed into law, shipments of hemp were seized by law enforcement because they appeared to be marijuana. *In order to protect legitimate hemp farmers, processors, and transporters, a copy of the seed certificate showing the hemp was grown from 1% THC seed would be included in hemp shipments.*
- **Create transparency and certainty by defining a margin of error in hemp testing:** Neither current law nor the USDA’s rule provide 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.² *The rule uses the example of +/- 0.05%,³ and Senator Paul proposes using 0.075% as the standard MU, giving farmers and processors the certainty they have requested.*

¹ 7 C.F.R. §§ 990.2(c) and 990.3(c) (2019).

² *Id.* at §§ 990.2b), 990.3(a)(iii), and 990.25(a) (2019).

³ *Id.*