



SENATE JOINT RESOLUTION 20-005

BY SENATOR(S) Marble and Fenberg, Bridges, Coram, Crowder, Donovan, Fields, Foote, Ginal, Gonzales, Hisey, Holbert, Lee, Moreno, Rankin, Rodriguez, Sonnenberg, Story, Tate, Todd, Williams A., Woodward, Garcia; also REPRESENTATIVE(S) Hooton and Saine, Arndt, Baisley, Becker, Bird, Bockenfeld, Buck, Buentello, Caraveo, Coleman, Cutter, Duran, Esgar, Froelich, Garnett, Geitner, Gonzales-Gutierrez, Gray, Herod, Holtorf, Jackson, Kennedy, Kipp, Kraft-Tharp, Lontine, McCluskie, McKean, Melton, Michaelson Jenet, Mullica, Neville, Pelton, Ransom, Roberts, Singer, Sirota, Snyder, Soper, Titone, Valdez A., Valdez D., Van Winkle, Weissman, Will, Williams D., Wilson, Young.

CONCERNING THE GENERAL ASSEMBLY'S SUPPORT OF THE STATE OF COLORADO'S WRITTEN COMMENTS SUBMITTED ON THE UNITED STATES DEPARTMENT OF AGRICULTURE'S INTERIM FINAL RULE REGARDING THE ESTABLISHMENT OF A DOMESTIC HEMP PRODUCTION PROGRAM.

WHEREAS, Colorado has long recognized the strong economic potential that hemp production offers our agricultural sector and the increasing consumer demand for hemp products in Colorado; and

WHEREAS, Colorado has been a national leader in developing public policies that support hemp production, protect farmers and consumers, and treat hemp as an important agricultural product and not a controlled substance; and

WHEREAS, The federal government enacted the "Agricultural Improvement Act of 2018", Pub.L. 115-334, which removed hemp from schedule I of the federal "Controlled Substances Act"; and

WHEREAS, The federal "Agricultural Improvement Act of 2018" required the United States department of agriculture (USDA) to develop

a plan for the regulation of hemp and authorizes each state to submit a state plan of regulation for approval by the secretary of the USDA; and

WHEREAS, On October 31, 2019, the USDA adopted an interim final rule (interim rule) entitled "Establishment of a Domestic Hemp Production Program", 7 CFR 990, that will remain in effect through November 1, 2021; and

WHEREAS, The USDA has requested that interested persons submit written comments on the interim rule on or before January 29, 2020, for the USDA to consider when adopting a final rule; and

WHEREAS, The Colorado department of agriculture (the State) solicited stakeholder feedback on the interim rule and submitted written comments to the USDA on behalf of Colorado, which comments reflect the overall sentiment of Colorado stakeholders, including farmers, local government officials, law enforcement, industry advocates, and academic institutions; and

WHEREAS, The State is submitting written comments on the interim rule; and

WHEREAS, The State's comments on the interim rule reflect Colorado's concern that the proposed requirements set forth in the interim rule are overly burdensome to farmers, will stifle the growth of Colorado's hemp industry, and will make it challenging to regulate hemp given the large size of Colorado's existing hemp industry; and

WHEREAS, Colorado has established an appropriate and reasonable regulatory framework that allows for the effective growth of the hemp industry in Colorado; and

WHEREAS, The State's written comments submitted for the USDA's consideration reflect specific, reasonable concerns and recommendations that are based on Colorado's regulatory experience and are highlighted in this resolution; and

WHEREAS, With respect to the interim rule's requirement that a laboratory registered with the federal drug enforcement agency (DEA) must conduct testing on hemp, the State's written comments suggest that

the USDA should instead allow for the use of state- or tribal-certified labs; and

WHEREAS, With respect to a threshold set in the interim rule establishing that the production of any crops that contain a THC concentration of more than 0.5% on a dry-weight basis constitutes a negligent violation that requires the development of a corrective plan, the State's written comments state that the threshold should be raised from 0.5% to 1.0% THC concentration on a dry-weight basis to limit the frequency of corrective plans; and

WHEREAS, Hemp seeds currently lack the genetic stability of other certified seed and the USDA has refrained from including in the interim rule the regulatory framework for a certified seed program or for seed breeding and research and development. The State's comments point out that this omission will stifle innovation and delay hemp genetics from achieving much-needed stability. The State feels strongly that there is a critical need to regulate hemp research and development differently than commercial production; and

WHEREAS, With respect to the interim rule's requirement that plants that test above 0.3% THC concentration on a dry-weight basis be disposed of in accordance with the federal "Controlled Substances Act" and DEA regulations, the State's written comments suggest that the final rule should instead allow state regulators to develop procedures for remediation of the plants to render them compliant instead of requiring their immediate disposal; and

WHEREAS, The State remains concerned that key provisions of the interim rule will raise barriers to entry for small farmers that could prevent this critically important constituency from entering the market, and the cumulative effects of the interim rule might unintentionally favor larger, more well-capitalized operations that can spread risk from a financial loss associated with a noncompliant crop; and

WHEREAS, With respect to the interim rule's requirement that plants be harvested within 15 days after they've been collected for testing, the State's written comments recommend that the final rule provide a 30-day harvesting window instead due to the substantial manual labor involved in harvesting hemp, the incompatibility with common harvesting

techniques, and the logistical challenges of complying with the increased sampling rate requirements; and

WHEREAS, The State's written comments on the interim rule present thoughtful and compelling recommendations on how the USDA's rules could be improved to allow for greater flexibility and equity in state regulation of hemp production in a manner that protects farmers and consumers and promotes growth of the industry; and

WHEREAS, The State's written comments on the interim rule align with Colorado's long-standing public policies to support hemp production, protect farmers and consumers, and treat hemp as an important agricultural product; now, therefore,

Be It Resolved by the Senate of the Seventy-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

(1) That the General Assembly strongly supports and concurs with the State's written comments on the interim rule;

(2) That the USDA should treat this Joint Resolution as written comments on the interim rule from the General Assembly; and

(3) That the General Assembly strongly supports the State's written comments and the adoption of a final rule that incorporates the recommendations in the State's written comments.

Be It Further Resolved, That copies of this Joint Resolution be transmitted to the Secretary of Agriculture Sonny Perdue, Administrator

Bruce Summers of the Agricultural Marketing Service of the USDA, and to each member of Colorado's congressional delegation.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
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Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____