

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

LLS NO. R20-0918.01 Jennifer Berman x3286

SJR20-005

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SENATE JOINT RESOLUTION 20-005

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

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

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Final Reading
January 24, 2020

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

4 WHEREAS, The federal "Agricultural Improvement Act of 2018"
5 required the United States department of agriculture (USDA) to develop
6 a plan for the regulation of hemp and authorizes each state to submit a
7 state plan of regulation for approval by the secretary of the USDA; and

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

12 WHEREAS, The USDA has requested that interested persons
13 submit written comments on the interim rule on or before January 29,
14 2020, for the USDA to consider when adopting a final rule; and

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

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

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

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

31 WHEREAS, The State's written comments submitted for the
32 USDA's consideration reflect specific, reasonable concerns and
33 recommendations that are based on Colorado's regulatory experience and

1 are highlighted in this resolution; and

2 WHEREAS, With respect to the interim rule's requirement that a
3 laboratory registered with the federal drug enforcement agency (DEA)
4 must conduct testing on hemp, the State's written comments suggest that
5 the USDA should instead allow for the use of state- or tribal-certified
6 labs; and

7 WHEREAS, With respect to a threshold set in the interim rule
8 establishing that the production of any crops that contain a THC
9 concentration of more than 0.5% on a dry-weight basis constitutes a
10 negligent violation that requires the development of a corrective plan, the
11 State's written comments state that the threshold should be raised from
12 0.5% to 1.0% THC concentration on a dry-weight basis to limit the
13 frequency of corrective plans; and

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

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

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

35 WHEREAS, With respect to the interim rule's requirement that
36 plants be harvested within 15 days after they've been collected for testing,

1 the State's written comments recommend that the final rule provide a
2 30-day harvesting window instead due to the substantial manual labor
3 involved in harvesting hemp, the incompatibility with common harvesting
4 techniques, and the logistical challenges of complying with the increased
5 sampling rate requirements; and

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

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

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

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

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

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

25 *Be It Further Resolved*, That copies of this Joint Resolution be
26 transmitted to the Secretary of Agriculture Sonny Perdue, Administrator
27 Bruce Summers of the Agricultural Marketing Service of the USDA, and
28 to each member of Colorado's congressional delegation.