

We are pleased to share our comments for the Federal Motor Carrier Safety Administration's Motor Carrier Advisory Committee meeting on July 13th, 2020.

Hemp was first defined as *Cannabis Sativa L.* with less than 0.3% Delta-9 THC in section 7606 of the 2014 Farm Bill (7 USC 5940). The 2014 Farm Bill reflected Congress's intent to explore hemp as a commodity crop regulated by state Departments of Agriculture and land-grant universities. Subsequent amendments to appropriations bills between 2015 and 2018 explicitly allowed for the transportation of hemp (genetics, germplasm, plant material, harvested biomass, finished products) across state lines, further adding to the success of the 2014 Farm Bill and hemp's future as an economic driver for rural America.

Congress again included hemp in the 2018 Farm Bill (PL 115-334) and built off the success from the previous Farm Bill by expanding the definition of hemp to include all cannabinoids, extracts and derivatives of hemp, except for delta 9 THC above 0.3%. The 2018 Farm Bill removed hemp from the Controlled Substances Act (CSA) and called for the creation of a regulatory framework under both the US Department of Agriculture (USDA) and the U.S. Food and Drug Administration (FDA).

We appreciate an evolving understanding by regulators towards hemp's vertical and believe that the *USDA's Interim Final Rule for Hemp Production* released in October 2019 is a wonderful start. Given the interim nature of the IFR, we understand that further engagement and iteration is necessary to create a better functioning framework that ensures success beginning on the farm and throughout hemp's value chain. We expect to see final rules for THC testing and retesting, taxonomy and good agricultural practices, transportation, and disposition of noncompliant material in the coming months and years.

The compliant transportation of hemp and hemp derived products is core to the development of this industry. It is important to note that Section 10114 of the 2018 Farm Bill¹ and Section §990.63 of the Interim Final Rule explicitly allow for the interstate transportation of hemp.

Since 2014, our work has led to the development and implementation of internal standard operating procedures in collaboration with law enforcement, agricultural transportation and logistics, and the hemp (federally legal cannabis) industry. Our internal understanding has constantly evolved, and to date we have transported tens of millions of pounds of hemp seeds, germplasm, rooted cuttings/seedlings, green and dried biomass, hemp-derived ingredients (pure CBD), and wholesale and finished goods across our value chain.

All transportation of hemp must be legal, but there is clearly an area where federal and state regulations are in conflict. The kernel of the issue is strict compliance with federal law. The 2018 Farm Bill, as above, provides the federal umbrella for approval of state and tribal sanctioning of the hemp industry. As footnoted below², the IFR attempts to resolve interstate transportation by prohibiting states from stopping the transportation of hemp, even in states without hemp programs. But it has some glaring omissions, including the transportation of federally non-compliant materials. The IFR, promulgated by USDA, sanctions states and tribes to regulate all aspects of hemp growing, but is silent on hemp processing. Processing is the key to unlocking hemp's economic value chain, and like other ag commodities, is often beyond the scope of USDA. This means that there is no federal legislation to

¹In addition to establishing a national regulatory framework for hemp production, Congress expressly preempted State law with regard to the interstate transportation of hemp. **Section 10114 of the 2018 Farm Bill** States that "[n]o State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable." Thus, States and Indian Tribes may not prevent the movement of hemp through their States or territories even if they prohibit its production. Congress also expressly preempted a State's ability to prosecute negligent violations of its plan as a criminal act in section 297B(e)(2)(c). That preemption is incorporated into this rule.

² **§ 990.63 Interstate transportation of hemp:** No State or Indian Tribe may prohibit the transportation or shipment of hemp or hemp products lawfully produced under a State or Tribal plan approved under subpart B of this part, under a license issued under subpart C of this part, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable.

provide the basis for federal regulation guiding the state/tribal processing of hemp. States/tribes are forced to deal with this situation locally, and many have derived **internal** solutions to the problem described below.

From our perspective, the transportation of all hemp material breaks into two separate pieces:

1. **Compliant transportation protocols based off of mainstream industry-** Our experience transporting hemp dictates the need for Standard Operating Procedures (SOP's) that include training of drivers, bills of lading and cargo manifests, copies of hemp licenses, and coordination with law enforcement (in certain cases). All competent business operators--from the farm to the store shelf--want compliance above all. Simply demonstrating traceability along with regulatory compliance satisfies this need, as it does for all other crops and foods/supplements derived from those crops.
2. **Non-Compliant transportation of hemp "work in process"³ between processing and finished good stages -** Since the processing of hemp into extracts requires the concentration of cannabinoids, including CBD and THC, many states have added additional regulatory policies that require approval to transport "work in progress" from one permitted processor to another within that state. This is probably permissible under the federal umbrella of the IFR.

At this time, we are unaware of any federal regulation that would allow for the legal transportation of any "work in progress" with concentrated THC above 0.3% across any state or international boundary. Further, we believe that USDA would have to drive that regulatory policy development, clearly with DEA and DOT sign-off, before any compliant business should allow that type of transportation. Effectively, this means that the "work in progress" is landlocked within each state as there is no existing federal regulatory framework that enables interstate transportation.

Our recommendations for the Motor Carrier Advisory Committee to consider are

- 1) **Define simple SOPs for transport of all compliant hemp.**
- 2) **Develop guidelines for transportation of non-compliant "work in process" hemp materials across state lines.**
- 3) **Education and guidance for law enforcement on their approach to the IFR and compliant transportation of hemp**

We look forward to further sharing these recommendations during the Motor Carrier Advisory Committee's session on Hemp on July 13th, 2020.

Sincerely,



Brett Goldman and Steve Bevan
Co-Founders, GenCanna Global
Founding Members, US Hemp Roundtable

³ **Hemp "work in process"**: Federally compliant hemp and hemp biomass must have a THC content of under 0.3% delta 9 THC. Thus the focus on testing at the farmers field by USDA and state/tribal agencies. Compliance at the farm does not mean compliance further downstream in the hemp value chain. A necessary part of the extraction process of removing cannabinoids from hemp biomass-- regardless of process methodology--is the concentration of that which is extracted: pressing, ethanol, water, alcohol, CO2 or other processes which removes part of the hemp biomass must concentrate that removed part. The remaining hemp biomass (spent hemp material) and the extracted concentrate, taken together, are compliant because they represent the original compliant hemp biomass. But when separated, the spent hemp material contains very little of the cannabinoids (either CBD or THC) and is economically worthless. The entire economic value is represented, and increased, in the concentrated extract. This becomes a math problem whereby 80-90% of the mass of the compliant biomass has now been removed in the extraction process. This means that the concentrated extract contains 5-10 times or more cannabinoids per unit mass. For example, federally compliant hemp biomass measuring 0.2% delta 9 THC before extraction could be expected to measure at 1-2% delta 9 THC, or more, as a concentrated extract. State Departments of Agriculture understand that this "work in process" can continue through the refinement process and be part of a THC remediation process that will render a final, compliant product. The issue becomes problematic when that remediation process is not co-located with the concentrated extract.