AGRICULTURE IMPROVEMENT ACT OF 2018

**★** (Star Print)



### PUBLIC LAW 115-334-DEC. 20, 2018

## Public Law 115-334 115th Congress

### An Act

Dec. 20, 2018 [H.R. 2]

To provide for the reform and continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2023, and for other purposes.

Agriculture Improvement Act of 2018. 7 USC 9001 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Agriculture Improvement Act of 2018".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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Sec. 12401. Office of Congressional Relations and Intergovernmental Affairs.  Sec. 12402. Military Veterans Agricultural Liaison.  Sec. 12403. Civil rights analyses.  Sec. 12404. Farm Service Agency.  Sec. 12405. Under Secretary of Agriculture for Farm Production and Conservation Sec. 12406. Office of Partnerships and Public Engagement.  Sec. 12407. Under Secretary of Agriculture for Rural Development.  Sec. 12408. Administrator of the Rural Utilities Service.  Sec. 12409. Rural Health Liaison.  Sec. 12410. Natural Resources Conservation Service.  Sec. 12411. Office of the Chief Scientist.  Sec. 12412. Appointment of national appeals division hearing officers.  Sec. 12413. Trade and foreign agricultural affairs.  Sec. 12414. Repeals.  Sec. 12415. Technical corrections.  Sec. 12416. Termination of authority.	n.
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### PART I—MISCELLANEOUS AGRICULTURE PROVISIONS

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Sec. 12511. Precision agriculture connectivity. Sec. 12512. Improvements to United States Drought Monitor. Sec. 12513. Dairy business innovation initiatives. Sec. 12514. Report on funding for the National Institute of Food and Agriculture and other extension programs.

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Sec. 12616. Extending prohibition on animal fighting to the territories.
Sec. 12617. Exemption of exportation of certain echinoderms from permission and licensing requirements.

Sec. 12618. Data on conservation practices. Sec. 12619. Conforming changes to Controlled Substances Act.

#### 7 USC 9001 note.

#### SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term "Secretary" means the Secretary of Agriculture.

## TITLE I—COMMODITIES

## Subtitle A—Commodity Policy

#### SEC. 1101. DEFINITION OF EFFECTIVE REFERENCE PRICE.

Section 1111 of the Agricultural Act of 2014 (7 U.S.C. 9011) is amended-

(1) by redesignating paragraphs (8) through (25) as paragraphs (9) through (26), respectively; and

(2) by inserting after paragraph (7) the following:

"(8) EFFECTIVE REFERENCE PRICE.—The term 'effective reference price', with respect to a covered commodity for a crop year, means the lesser of the following:

"(A) An amount equal to 115 percent of the reference

price for such covered commodity.

"(B) An amount equal to the greater of—

"(i) the reference price for such covered commodity;

"(ii) 85 percent of the average of the marketing year average price of the covered commodity for the

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Protection Act (7 U.S.C. 7701 et seq.) and recommendations

with respect to such challenges; and

(8) describing the coordination and collaboration occurring between the Animal and Plant Health Inspection Service and the Forest Service with respect to-

(A) identifying and prioritizing critical detection, surveillance, and eradication needs for tree and wood pests;

(B) identifying the actions each agency takes within their respective missions to address identified priorities.

### SEC. 10111. REPORT ON PLANT BIOSTIMULANTS.

(a) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the President and Congress that identifies any potential regulatory, non-regulatory, and legislative recommendations, including the appropriateness of any definitions for plant biostimulant, to ensure the efficient and appropriate review, approval, uniform national labeling, and availability of plant biostimulant products to agricultural producers.

(b) Consultation.—The Secretary shall prepare the report required by subsection (a) in consultation with the Administrator of the Environmental Protection Agency, the several States, industry stakeholders, and such other stakeholders as the Secretary

determines necessary.

(c) PLANT BIOSTIMULANT.—For the purposes of the report under

subsection (a), the Secretary-

(1) shall consider "plant biostimulant" to be a substance or micro-organism that, when applied to seeds, plants, or the rhizosphere, stimulates natural processes to enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic stress, or crop quality and yield; and

(2) may modify the description of plant biostimulant, as

appropriate.

### SEC. 10112. CLARIFICATION OF USE OF FUNDS FOR TECHNICAL ASSIST-ANCE.

Section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i) is amended in the last sentence by inserting after "activities" the following: "but excluding any amounts used to provide technical assistance under title X of the Agriculture Improvement Act of 2018 or an amendment made by that title".

#### SEC. 10113. HEMP PRODUCTION.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

## "Subtitle G—Hemp Production

7 USC 1639o.

#### "SEC. 297A. DEFINITIONS.

"In this subtitle:

"(1) HEMP.—The term 'hemp' means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

132 STAT. 4909

"(2) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

"(3) SECRETARY.—The term 'Secretary' means the Secretary

of Agriculture.

"(4) STATE.—The term 'State' means—

"(A) a State;

"(B) the District of Columbia;

"(C) the Commonwealth of Puerto Rico; and

"(D) any other territory or possession of the United

"(5) STATE DEPARTMENT OF AGRICULTURE.—The term 'State department of agriculture' means the agency, commission, or department of a State government responsible for agriculture

n the State.

"(6) TRIBAL GOVERNMENT.—The term 'Tribal government' means the governing body of an Indian tribe.

#### "SEC. 297B. STATE AND TRIBAL PLANS.

7 USC 1639p.

"(a) Submission.—

"(1) IN GENERAL.—A State or Indian tribe desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian tribe shall submit to the Secretary, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian tribe monitors and regulates that production as described in paragraph (2).

"(2) CONTENTS.—A State or Tribal plan referred to in para-

graph (1)—

"(A) shall only be required to include—

"(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

"(ii) a procedure for testing, using postdecarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian

tribe;

"(iii) a procedure for the effective disposal of—
"(I) plants, whether growing or not, that are
produced in violation of this subtitle; and

"(II) products derived from those plants;

"(iv) a procedure to comply with the enforcement

procedures under subsection (e);

"(v) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;

"(vi) a procedure for submitting the information described in section 297C(d)(2), as applicable, to the Secretary not more than 30 days after the date on

which the information is received; and

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"(vii) a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through

(vi); and

"(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.

"(3) RELATION TO STATE AND TRIBAL LAW.-

"(A) NO PREEMPTION.—Nothing in this subsection preempts or limits any law of a State or Indian tribe that-

"(i) regulates the production of hemp; and "(ii) is more stringent than this subtitle.

"(B) REFERENCES IN PLANS.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

"(b) APPROVAL.-

"(1) IN GENERAL.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

"(A) approve the State or Tribal plan if the State

or Tribal plan complies with subsection (a); or

"(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).

"(2) AMENDED PLANS.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).

"(3) CONSULTATION.—The Secretary shall consult with the

Attorney General in carrying out this subsection.

"(c) AUDIT OF STATE COMPLIANCE.-

"(1) IN GENERAL.—The Secretary may conduct an audit of the compliance of a State or Indian tribe with a State

or Tribal plan approved under subsection (b).

"(2) NONCOMPLIANCE.—If the Secretary determines under an audit conducted under paragraph (1) that a State or Indian tribe is not materially in compliance with a State or Tribal plan-

"(A) the Secretary shall collaborate with the State or Indian tribe to develop a corrective action plan in the case of a first instance of noncompliance; and

"(B) the Secretary may revoke approval of the State or Tribal plan in the case of a second or subsequent

instance of noncompliance.

- "(d) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).
  - "(e) VIOLATIONS.-"(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

"(2) Negligent violation.—

"(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

"(i) failing to provide a legal description of land

on which the producer produces hemp;

"(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

"(iii) producing Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3

percent on a dry weight basis.

"(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including-

"(i) a reasonable date by which the hemp producer

shall correct the negligent violation; and

'(ii) a requirement that the hemp producer shall periodically report to the State department of agri-culture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.

"(C) RESULT OF NEGLIGENT VIOLATION.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not as a result of that violation be subject to any criminal enforcement action by the Federal Government or any State government, Tribal govern-

ment, or local government.

"(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

"(3) OTHER VIOLATIONS.-

"(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence-

"(i) the State department of agriculture or Tribal government, as applicable, shall immediately report

the hemp producer to—
"(I) the Attorney General; and

"(II) the chief law enforcement officer of the State or Indian tribe, as applicable; and

"(ii) paragraph (1) of this subsection shall not apply to the violation.

"(B) Felony.-

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"(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction-

"(I) to participate in the program established

under this section or section 297C; and

"(II) to produce hemp under any regulations

or guidelines issued under section 297D(a).

"(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.

"(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section

shall be ineligible to participate in that program.

"(f) Effect.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—
"(1) for which a State or Tribal plan is not approved under

this section, if the production of hemp is in accordance with section 297C or other Federal laws (including regulations);

"(2) if the production of hemp is not otherwise prohibited

by the State or Indian tribe.

#### 7 USC 1639a.

#### "SEC. 297C. DEPARTMENT OF AGRICULTURE.

"(a) DEPARTMENT OF AGRICULTURE PLAN.—

"(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian tribe shall be subject to a plan established by the Secretary to monitor and regulate that production in accordance with paragraph (2).

"(2) CONTENT.—A plan established by the Secretary under

paragraph (1) shall include-

(A) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

(B) a procedure for testing, using post-decarboxylation similarly reliable methods, other tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

"(C) a procedure for the effective disposal of-

"(i) plants, whether growing or not, that are produced in violation of this subtitle; and

"(ii) products derived from those plants;

"(D) a procedure to comply with the enforcement proce-

dures under subsection (c)(2);

"(E) a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle; and

"(F) such other practices or procedures as the Secretary considers to be appropriate, to the extent that the practice or procedure is consistent with this subtitle.

"(b) LICENSING.—The Secretary shall establish a procedure to issue licenses to hemp producers in accordance with a plan estab-

lished under subsection (a).
"(c) VIOLATIONS.—

"(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the territory of that Indian tribe without a license issued by the Secretary under subsection (b).

"(2) NEGLIGENT AND OTHER VIOLATIONS.—A violation of a plan established under subsection (a) shall be subject to enforcement in accordance with paragraphs (2) and (3) of section 297B(e), except that the Secretary shall carry out that enforcement instead of a State department of agriculture or Tribal government.

"(3) REPORTING TO ATTORNEY GENERAL.—In the case of a State or Indian tribe covered by paragraph (1), the Secretary shall report the production of hemp without a license issued by the Secretary under subsection (b) to the Attorney General.

"(d) Information Sharing for Law Enforcement.—

"(1) IN GENERAL.—The Secretary shall—

"(A) collect the information described in paragraph (2);

and

"(B) make the information collected under subparagraph (A) accessible in real time to Federal, State, territorial, and local law enforcement.

"(2) CONTENT.—The information collected by the Secretary

under paragraph (1) shall include—

"(A) contact information for each hemp producer in a State or the territory of an Indian tribe for which— "(i) a State or Tribal plan is approved under section

297B(b); or "(ii) a plan is established by the Secretary under

this section;

"(B) a legal description of the land on which hemp is grown by each hemp producer described in subparagraph (A); and

"(C) for each hemp producer described in subparagraph

(A)—

"(i) the status of-

"(I) a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

"(II) a license from the Secretary; and

"(ii) any changes to the status.

"SEC. 297D. REGULATIONS AND GUIDELINES; EFFECT ON OTHER LAW. 7 USC 1639r.

"(a) Promulgation of Regulations and Guidelines; Report.—

"(1) REGULATIONS AND GUIDELINES.—

"(A) IN GENERAL.—The Secretary shall promulgate regulations and guidelines to implement this subtitle as expeditiously as practicable.

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"(B) CONSULTATION WITH ATTORNEY GENERAL.—The Secretary shall consult with the Attorney General on the promulgation of regulations and guidelines under subparagraph (A)

graph (Å).

"(2) REPORT.—The Secretary shall annually submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing updates on the implementation of this subtitle.

"(b) AUTHORITY.—Subject to subsection (c)(3)(B), the Secretary shall have sole authority to promulgate Federal regulations and guidelines that relate to the production of hemp, including Federal regulations and guidelines that relate to the implementation of sections 297B and 297C.

"(c) EFFECT ON OTHER LAW.—Nothing in this subtitle shall

affect or modify-

"(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

301 et seq.);
"(2) section 351 of the Public Health Service Act (42 U.S.C.

262); or
"(3) the authority of the Commissioner of Food and Drugs
and the Secretary of Health and Human Services—

"(A) under—

"(i) the Federal Food, Drug, and Cosmetic Act (21

U.S.C. 301 et seq.); or

"(ii) section 351 of the Public Health Service Act

(42 U.S.C. 262); or

"(B) to promulgate Federal regulations and guidelines that relate to the production of hemp under the Act described in subparagraph (A)(i) or the section described in subparagraph (A)(ii).

7 USC 1639s.

### "SEC. 297E. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary to carry out this subtitle.".

7 USC 16390 note.

#### SEC. 10114. INTERSTATE COMMERCE.

(a) RULE OF CONSTRUCTION.—Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products.

(b) Transportation of Hemp and Hemp Products.—No 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.

## SEC. 10115. FIFRA INTERAGENCY WORKING GROUP.

Section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 13a(c)) is amended by adding at the end the following:

"(11) INTERAGENCY WORKING GROUP.—

"(A) DEFINITION OF COVERED AGENCY.—In this paragraph, the term 'covered agency' means any of the following:

"(i) The Department of Agriculture. "(ii) The Department of Commerce.

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"(b) REPORT.—Not later than 1 year after the date of enactment of the Agriculture Improvement Act of 2018, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

"(1) a summary of the data sets identified under subsection

(a);

"(2) a summary of the steps the Secretary would have to take to provide access to such data sets by university researchers, including taking into account any technical, privacy, or administrative considerations;

"(3) a summary of safeguards the Secretary employs when

providing access to data to university researchers;

"(4) a summary of appropriate procedures to maximize the potential for research benefits while preventing any viola-

tions of privacy or confidentiality; and

"(5) recommendations for any necessary authorizations or clarifications of Federal law to allow access to such data sets to maximize the potential for research benefits.".

# SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES

(a) IN GENERAL.—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended-

(1) by striking "(16) The" and inserting "(16)(A) Subject to subparagraph (B), the"; and

(2) by striking "Such term does not include the" and inserting the following:

"(B) The term 'marihuana' does not include—

"(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

"(ii) the".

(b) Tetrahydrocannabinol.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), by amended subsection (c)(17)"Tetrahydrocannabinols" in inserting the following: except tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)".

Approved December 20, 2018.

#### LEGISLATIVE HISTORY-H.R. 2:

HOUSE REPORTS: Nos. 115-661 (Comm. on Agriculture) and 115-1072 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 164 (2018):

May 16-18, considered and failed House.
June 21, considered and passed House.
June 27, 28, considered and passed Senate, amended.
Dec. 11, Senate agreed to the conference report.
Dec. 12, House agreed to the conference report.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2018):

Dec. 20, Presidential remarks and statement.