# Congress of the United States

Washington, DC 20515

October 27, 2016

Secretary Thomas J. Vilsack
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Deputy Assistant Administrator Louis J. Milione
Drug Enforcement Agency
8701 Morrissette Drive
Springfield, VA 22152

Associate Commissioner Leslie Kux
Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Secretary Vilsack, Deputy Assistant Administrator Milione, and Associate Commissioner Kux:

We are writing to comment on the recent progress the Administration has made with regards to industrial hemp and to urge further action to ensure that this important industry can thrive.

First, we are very pleased to learn that as a result of Section 7606 of the Agricultural Act of 2014 ("Farm Bill") on industrial hemp, the U.S. Department of Agriculture (USDA), after consultation with the U.S. Drug Enforcement Administration (DEA) and the U.S. Food and Drug Administration (FDA), will be supporting industrial hemp research through its National Institute of Food and Agriculture (NIFA). With NIFA industrial hemp research grants, research institutions and farmers will be on a level playing field with other crops and will be able to expand their research far beyond their original capacity. Thank you for your responsiveness to our questions on this matter and in providing this new opportunity. Our constituents are truly grateful for the ability to compete for this new avenue of support.

Industrial hemp research and farming have opened doors for students, farmers, and small businesses in our states. At our universities, students and researchers are experiencing new learning opportunities, such as researching hemp for fuel, food, and clothing. Hemp farming has brought a number of first-generation farmers into an agricultural industry that has struggled to attract new, young farmers. Additionally, American-grown hemp is already being used in a number of products, ranging from fibers in automobile panels, food, animal bedding, and soaps and salves, made right here in America. The different crops and products have varying success, which is why the industrial hemp research conducted under the 2014 Farm Bill is so important to determining which hemp plants and products are the most successful to cultivate.

However, regarding the August 12, 2016 "Statement of Principles on Industrial Hemp," we are concerned with a number of provisions, detailed below:

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**Definition of "Industrial Hemp"**

Congress clearly defined "industrial hemp" in Sec. 7606 of the 2014 Farm Bill as "the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." Nonetheless, the USDA, DEA, and FDA have attempted to alter this definition in their Guidance to be defined as:

> [T]he plant *Cannabis sativa L.* and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis. The term 'tetrahydrocannabinols' includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols.

Our concerns are twofold: We disagree with the Executive Branch more narrowly defining what Congress has already clearly defined in law. With such a narrow definition, limiting application of industrial purposes to fiber and seed, researchers will be prohibited from studying other parts of the hemp plant, which are vital to understanding the entire plant and all of its potential uses. For instance, over half of Kentucky's hemp acres are being used to research cannabidiol (CBD), an oil, which could be prohibited under the guidance's definition.

Furthermore, the guidance's definition drops the "delta-9" when describing tetrahydrocannabinol ("THC") (i.e., the psychoactive component of the cannabis plant), but adds isomers, acids, and salts of isomers of THC to count against the 0.3% THC threshold. This provision may prohibit industrial hemp research which would otherwise be legal under the 2014 Farm Bill.

**We request that you please remove the definition of industrial hemp provided in the guidance or revise it to be identical to the definition as laid out in the 2014 Farm Bill so as to align the guidance with the law and avoid any confusion or chilling effect among industrial hemp growers across the country.**

**Impacts on Commerce**

The 2014 Farm Bill defined agricultural pilot programs as programs "to study the growth, cultivation, or marketing of industrial hemp."

The guidance says that industrial hemp products "may be sold," "but not for the purpose of general commercial activity." The Congressional definition of hemp did not narrow marketing research in any such way, nor prompt the agencies to provide a narrower definition for marketing research. A single sale is commercial in nature.

**Please confirm that "general commercial activity" does not prevent any type of sale occurring from the framework of an approved pilot program.**

**Transportation & Sale of Hemp**

Congress prohibits the federal government from interfering with the transportation and sale of industrial hemp grown in accordance with a pilot program, while leaving it up to the states to regulate industrial hemp within their borders. Specifically, Sections 543 and 763 of the Consolidated Appropriations Act, 2016 (P.L. 114-113) states that the Executive Branch may not use funds appropriated to it "in contravention of section 7606 of the [2014 Farm Bill]" or "to prohibit the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with…section 7606 of the Agricultural Act of 2014, within or outside the State in which the industrial hemp is grown or cultivated."

However, the guidance provides that an "industrial hemp product may be sold in a State with an agricultural pilot program or among States with agricultural pilot programs but may not be sold in States where such sale is prohibited. Industrial hemp plants and seeds may not be transported across State lines."

This guidance seems to limit the sale of hemp products just to states with an industrial agricultural pilot program. Many states allow for the sale of internationally-sourced hemp within their borders, and the federal government should not prohibit the sale of similar products that are produced by an approved pilot program in the United States. More importantly, the federal government does not have authority to limit these sales under Sec. 763. Additionally, the guidance prohibits the transport of plants and seeds across state lines. Again, because of Sec. 763, the federal government does not have the authority to issue this part of the guidance.

**We request that you please remove the attempted prohibition on transporting plants and seeds across state lines.**

**Additionally, please also confirm that a state will not be penalized from securing seed and plant shipments from other state(s) with approved industrial hemp pilot programs.**

Thank you for your prompt attention to our concerns, as well as those which have been raised by states and from attorneys representing the leading associations in the America hemp industry. We look forward to working with USDA, DEA, and FDA to continue fostering the success of the industrial hemp industry across the country.

Sincerely,

Senator Rand Paul, M.D.
United States Senator

Senator Ron Wyden
United States Senator

Rep. Jared Polis
Member of Congress

Rep. Earl Blumenauer
Member of Congress

Rep. Thomas Massie
Member of Congress

Senator Jeffrey A. Merkley
United States Senator

Senator Steve Daines
United States Senator

Rep. Suzanne Bonamici
Member of Congress

Rep. Kevin Cramer
Member of Congress

Rep. Peter DeFazio
Member of Congress

Rep. Suzan DelBene
Member of Congress

Rep. Barbara Lee
Member of Congress

Rep. Eleanor Holmes Norton
Member of Congress

Rep. Mark Pocan
Member of Congress

Rep. Dana Rohrabacher
Member of Congress

Rep. Kurt Schrader
Member of Congress

Rep. John Yarmuth
Member of Congress

Rep. Ryan Zinke
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Rep. Sam Farr
Member of Congress