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United States Senate

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October 6, 2016

The Honorable Thomas J. Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Vilsack,

I write today regarding the joint Statement of Principles on Industrial Hemp (Federal Register; Vol 81: no.156) (herein referred to as the "Joint Statement") developed by the U.S. Department of Agriculture (USDA) in consultation with the Drug Enforcement Agency (DEA) and the Food and Drug Administration (FDA). I was directly involved with the drafting and inclusion of Section 7606 in the Agricultural Act of 2014 (P.L. 113-79), as well as Section 763 in the Consolidated Appropriations Act of 2016 (P.L. 114-113, Division A). First, I would like to thank your agency for authorizing industrial hemp pilot programs to compete for federal grant funding through the National Institute of Food and Agriculture (NIFA). I am encouraged that this federal support will help enhance the research that is already being conducted. That said, while I am pleased that the USDA has been responsive to my inquiries regarding federal funding opportunities for industrial hemp research, I am concerned that other aspects of the Joint Statement are at variance with federal law and will inhibit lawful research into the promise of industrial hemp.

As you may know, Kentucky leads the country in the growth and production of industrial hemp. In 2016, over 4,600 acres were approved for hemp production – 2,300 of which are confirmed planted. Further, ten of our state's colleges and universities are participating in hemp research that could be impacted by certain findings within the Joint Statement. I have enclosed for your reference a letter from Dr. David W. Williams, Professor from the University of Kentucky Department of Plant and Soil Sciences and largely considered one of the lead researchers on industrial hemp. As his letter explains, interpretations in the Joint Statement could immediately curtail research being conducted throughout the state, and specifically at the University of Kentucky.

For example, the Joint Statement appears to narrow the definition of industrial hemp beyond what Congress explicitly prescribed in the Agricultural Act of 2014. The Joint Statement defines industrial hemp as "the plant Cannabis sativa L and any part or derivative 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," and that "includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols." Federal law, however, defines "industrial hemp" based only on the presence of delta-9

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tetrahydrocannabinols and only when it is present in a "concentration of not more than 0.3 percent on a dry weight basis." See 7 U.S.C. Section 5940(b)(2). Congress explicitly based the definition of industrial hemp on the presence of "delta-9 tetrahydrocannabinol," as this compound is the primary psychoactive ingredient found in the cannabis plant. Furthermore, Congress did not include in this definition "all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols" in cannabis plants as the Joint Statement does. According to Dr. Williams, under the guidance contained in the Joint Statement, "many of the varieties [of industrial hemp] currently under study at UK will very likely exceed the 0.3% limit." "Denying access to these varieties due to the concentrations of non-THC cannabinoids would significantly impede" UK's research, he concludes.

In addition, the Joint Statement appears to limit marketing research for industrial hemp products, again in contravention of federal law. The Joint Statement provides that "industrial hemp products 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." Federal law, however, does not limit the ability to sell lawfully grown industrial hemp products only to states with agricultural pilot programs. It only requires that the products be from "industrial hemp that is grown or cultivated in accordance" with an authorized pilot program. See Section 763(2) of P.L. 114-113 (Division A). The importation of hemp products is legal in all fifty states. And as Dr. Williams notes, "[i]f it becomes illegal to sell processed hemp products except in states with pilot research programs and/or for profit (general commercial activity), it will almost certainly have a very negative impact on the evolving hemp industry" in this country.

Although the Joint Statement acknowledges that it "does not establish any binding legal requirements," I am concerned that some of its pronouncements will inhibit or prevent lawful research into the potential of industrial hemp. Please review the issues that I and the University of Kentucky have raised and please consider revising your guidance to ensure that it conforms to federal law. I look forward to your prompt response and to continuing to work with the USDA to enhance and build on the important industrial hemp research that has taken place thus far.

Sincerely,

MITCH McCONNELL
U.S. SENATE MAJORITY LEADER

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Enclosure

cc: The Honorable Chuck Rosenberg, Acting Administrator of the Drug Enforcement Agency
The Honorable Robert M. Califf, MD, Commissioner of the Food and Drug Administration