Ryan F. Quarles
Commissioner

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Kentucky Department of Agriculture

September 12, 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 221152

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:

As Commissioner of the Kentucky Department of Agriculture ("KDA"), I am writing to provide my comments on, and my objections to, the *Statement of Principles on Industrial Hemp* released by your agencies on August 12, 2016.

I would first like to express my appreciation to the USDA for its recent announcement that participants in authorized pilot programs may be able to participate in USDA research or other programs. I applaud this decision to allow hemp growers and processors to be eligible for federal loans, grants, and other programs.

As you may know, KDA's research pilot program is currently in its third growing season. In the course of just a few years, industrial hemp production in Kentucky has climbed from zero to more than two thousand acres planted. We expect to see continued growth in the coming years as the Commonwealth's hemp growers and processors experiment with different cultivating, processing, and marketing methods to learn as much as we can about the economic potential of this versatile crop. I believe it is incumbent upon those of us who work in government to do everything possible within the limits of the law to support our growers and processors. Freedom, flexibility and latitude to try new methods and applications are essential to the success of any agricultural research pilot program. Industrial hemp research pilot programs are no different.

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I am concerned that some of the positions in your recent *Statement of Principles*, if acted upon, would curtail state industrial hemp research pilot programs to an extent that is unnecessary, unwise, and contrary to the intent of Congress. In the 2014 Farm Bill and in the Consolidated Appropriations Act for FY 2016, Congress defined the parameters within which state agriculture departments and universities must operate if they choose to conduct an industrial hemp research pilot program. I believe it is inappropriate for federal agencies to impose additional restrictions that purport to close off vast zones of experimentation that Congress itself allowed, especially in the absence of any statutory authorization for such action.

The following specific positions within the *Statement of Principles* are contrary to Congressional intent or otherwise inadvisable.

1. **Narrowing Congress's definition of "industrial hemp" to include only historically proven applications (fiber and seed) while excluding other potential applications.**

As I have noted, to be successful an agricultural research pilot program must give its participants sufficient freedom, flexibility and latitude to experiment with new methods and applications. The *Statement of Principles*, however, purports to redefine "industrial hemp" to mean a plant "that is used exclusively for industrial purposes (fiber and seed)[.]" This redefinition is problematic in at least two ways.

First, the *Statement*'s redefinition seems to exclude potential hemp product applications other than those intended for "industrial purposes." To the contrary, there are a number of viable non-industrial hemp product applications, including the use of hemp parts as food ingredients, as materials for artistic use (for example, in hand-made crafts) or as ingredients for pharmaceutical, nutraceutical or other health-related purposes. The *Statement*'s implied, and wholly unexplained, rejection of these viable applications is especially curious considering that the document itself, in another paragraph, contemplates that hemp producers could seek FDA approval for hemp-based foods or drugs by undergoing the approval processes established under the authority of the federal Food, Drug and Cosmetic Act.

Second, the *Statement*'s redefinition implies that only two parts of the hemp plant—its fiber and its seeds—hold potential for economic utility. This is factually incorrect. For instance, here in Kentucky, more than half of the acreage currently cultivated by KDA's pilot program participants is being raised to harvest not fiber, not seeds, but cannabidiol (CBD). CBD shows great promise as an economically viable agricultural product. Kentucky's General Assembly is one of many state legislatures that have expressed their support for continuing and expanding CBD applications and research. By focusing exclusively on fiber and seeds, the *Statement* incorrectly

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suggests that CBD (and any other products that could be derived from any part of the hemp plant) cannot be an appropriate industrial hemp product.

2. Broadening the definition of "tetrahydrocannabinol" to encompass substances other than the delta-9 substance targeted by Congress.

The 2014 Farm Bill explicitly designated "delta-9 tetrahydrocannabinol ['THC']" as the specific substance whose dry weight basis must remain at or below 0.3 percent in order for a plant to be considered industrial hemp:

> *The term "industrial hemp" means the plant* Cannabis sativa L. *and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis.*

Congress's chosen definition is appropriate because delta-9 tetrahydrocannabinol (THC) is the primary psychoactive ingredient in the cannabis plant. That being the case, it makes sense to focus on delta-9 THC levels when testing a plant's dry weight basis.

Strangely, the *Statement*'s redefinition of "industrial hemp" omits the "delta-9" portion of Congress's definition and also broadens the definition to include "all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols." With these alterations, the *Statement* seems to suggest that dry weight basis levels of non-psychoactive compounds could be pertinent to determining whether a plant remains at or below the 0.3 percent dry weight basis threshold.

By losing sight of the THC type that is the proper focus of our nation's drug-control policy—the delta-9 compound—this redefinition creates two distinct problems. First, the redefinition will generate needless confusion among our nation's growers and processors by introducing a new standard that differs from the one that industrial hemp research pilot program participants have relied upon for years. Second, the redefinition could render most, if not all, variants of industrial hemp ineligible for study in research pilot programs—even variants whose psychoactive content (delta-9 THC) is known to be below the 0.3 percent dry weight basis threshold—by measuring non-psychoactive cannabinoids.

We respectfully request your reconsideration of this ill-advised alteration of Congress's chosen definition.

3. Prohibiting transfers of hemp seeds and plants across state lines, despite Congress's clear intent to allow such interstate transfers.

Finally, the *Statement's* declaration that "[i]ndustrial hemp plants and seeds may not be transported across State lines" flies in the face of Congressional intent. In Section 763 of the

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Consolidated Appropriations Act for FY 2016, Congress expressly prohibited any expenditure of federal funds to prevent the transport of hemp grown by a participant in an industrial hemp research pilot program "within or outside the States in which the industrial hemp is grown or cultivated."

Given Congress's clear command, the *Statement*'s attempt to discourage interstate movements of hemp plants and seeds is difficult to understand—let alone justify. It is even more bizarre in light of two salient facts: first, importation from foreign sources was, and remains, lawful when conducted under the authority of a research pilot program; and second, the importation and sale of internationally grown hemp grain and fiber is lawful in all fifty states. I cannot understand why the importation rules should be more restrictive for interstate transfers than for international transfers.

In any event, no federal agency may expend federal funds to implement this declaration. Accordingly, KDA considers this declaration to be null and void.

Conclusion

Thank you for your careful attention to these comments and objections. KDA remains committed to doing everything we can to support Kentucky's expanding community of hemp growers and processors. Our commitment includes allowing our research pilot program participants the freedom, flexibility and latitude they need to experiment with all of this versatile crop's parts—not just the grains and fibers whose utility was known to previous generations—so that we may learn as much as we can about its economic potential.

For the reasons stated in this letter, I am concerned that some of the positions set forth in your agency's *Statement of Principles* could hinder industrial hemp's economic potential by imposing restrictions narrower than the parameters defined by Congress. KDA respectfully urges you to reconsider these problematic positions, and to join KDA in our efforts to lay a solid foundation for future growth.

Best regards,

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Commissioner
Kentucky Department of Agriculture

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