

Congress of the United States
Washington, DC 20515

March 29, 2021

The Honorable Merrick Garland
Attorney General of the United States
Department of Justice
400 6th Street, NW
Washington, DC 20001

The Honorable Thomas J. Vilsack
Secretary of the Department of Agriculture
United States Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Mr. Attorney General and Mr. Secretary:

We are writing to you to express our concern over the serious unintended consequences that could arise from the Drug Enforcement Agency's (DEA) Interim Final Rule (IFR) issued for hemp on August 21, 2020. In order to address these concerns and not cause unnecessary damage to the hemp industry, we encourage the DEA and the U.S. Department of Agriculture (USDA) to collaborate with the hemp industry to resolve the issues raised by the IFR, and to clarify publicly that USDA is the primary Federal agency in charge of regulating the transportation, processing, sale, or use of hemp and in-process hemp extract.

When Congress passed the 2018 Farm Bill, it was our intent to vest primary regulatory authority over the production of hemp with USDA. To that end, USDA issued an Interim Final Rule for the "Establishment of a Domestic Hemp Production Program" more than a year ago and finalized that rule on January 15, 2021. It is our understanding that this final rule, with an effective date of March 22, 2021, is currently being reviewed by the Biden Administration

As leaders on agriculture policy in the U.S. House of Representatives, it is our underlying goal to ensure that Federal regulations concerning hemp are fair, easily understood, and consistent across agencies. When inconsistencies in regulation arise, it is our farmers who are primarily harmed. We believe that stronger collaboration between USDA, DOJ, other Federal agencies, and hemp industry stakeholders could help alleviate many issues impacting our hemp producers.

Congress did not intend the 2018 Farm Bill to criminalize any stage of legal hemp processing, and we are concerned that hemp grown in compliance with a USDA-approved plan could receive undue scrutiny from the DEA as it is being processed into a legal consumer-facing product under this IFR. That is why the 2018 Farm Bill's definition of hemp was broadened from the 2014 Farm Bill's version to include derivatives, extracts, and cannabinoids. It was our intent that derivatives, extracts, and cannabinoids would be legal if these products were in compliance with all other Federal regulations. To highlight our intent, the following report language was included with H.R. 133, the Consolidated Appropriations Act of 2021.

“[t]he USDA shall develop regulations, within existing authority, that protect the transportation, processing, sale, or use of hemp and in-process hemp extract, that may temporarily exceed a delta-9 THC concentration of 0.3%, including in-process hemp extract that was: (1) produced from hemp that meets the definition of hemp under 7 USC §1639o; (2) cultivated in accordance with subtitle G of the Agricultural Marketing Act of 1946 [7 U.S.C. 1639o et seq.] (as added by section 10113 of the Agriculture Improvement Act of 2018) or section 7606 of the Agricultural Act of 2014 [7 USC 5940]; (3) not packaged as a finished product; and (4) not sold or offered for sale as a finished product to consumers.

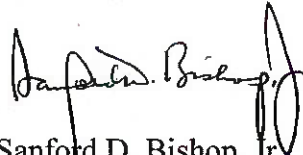
We understand from our constituents that hemp processors have been confused about the legality of their processing operations. Because of this confusion, some processors have halted operations altogether. In addition to economic impacts, we are concerned that the lack of a uniform, risk appropriate Federal regulatory approach will stifle innovation, advancement, and product development in an industry poised for robust growth in the coming years.

To address our concerns, we would hope that your agencies would consider jointly meeting with industry stakeholders to resolve concerns with DEA’s regulations. Given USDA’s current review of its hemp regulations, we believe that this moment presents the best opportunity to ensure consistency across Federal agencies that will ultimately benefit our farmers and hemp-related businesses. Moving forward, we would also request proactive and continued collaboration between your agencies on any future regulatory actions that could impact hemp producers and processors. Thank you for your consideration, and our offices look forward to your timely response.

Sincerely,



David Scott
Chairman
House Agriculture Committee



Sanford D. Bishop, Jr.
Chairman
House Appropriations Subcommittee on
Agriculture, Rural Development, Food and
Drug Administration, and Related Agencies