Congress of the United States
Washington, DC 20515

December 13, 2019

The Honorable Sonny Perdue
Secretary
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Perdue,

Thank you for your leadership on implementing the U.S. Domestic Hemp Production Program as authorized by Section 297 B of the Agriculture Improvement Act of 2018 (P.L 115-334)[1]. Industrial hemp provides an important opportunity for Virginia's farmers as well as agribusinesses across the country. In 2019, farmers planted 2,200 acres of hemp in Virginia, and we saw increasing interest in growing and processing this crop.

The U.S. Department of Agriculture's (USDA) new interim final rule on industrial hemp production (published in 84 FR 58522[2]) provides much needed clarity for farmers, regulators, and law enforcement officials. We appreciate the work that has taken place so far, especially since getting the rules and regulations for the hemp industry right is important to Virginia and to the agriculture economy across the country.

However, we write to express suggested improvements to benefit farmers and to better align the rule with realities on the ground. We urge further consideration of certain elements of the sampling and testing standards in the guidance for states that intend to submit a State Action Plan to USDA for the regulation of hemp and hemp products. As currently written, these standards could impose excess costs on farmers as they undergo testing and could cause significant delays. We have outlined our concerns below:

- The interim final rule requires every lot be sampled before going to market. Instead, we recommend taking a calculated-risk and hazard approach to sampling and testing, in which a percentage of crop from each region (as designated in state action plans) is sampled and tested. To ensure that permitted THC thresholds are not exceeded, sampling procedures could differ for repeat offenders and as complaints arise. Taking this approach will allow Virginia (and other states) to properly monitor THC levels without overburdening the Virginia Department of Agriculture and Consumer Services and the Commonwealth's testing centers.

[1] https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf
[2] https://www.govinfo.gov/content/pkg/FR-2019-10-31/pdf/2019-23749.pdf

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- The interim final rule requires hemp crops to be collected and tested for THC levels within 15 days of the anticipated harvest. We believe 15 days is an unachievable timeframe for growers to sample each crop, submit the testing sample, and receive a response before sending the product to market. We recommend extending the timeline to 30 days before harvest. The current, unrealistic 15-day window will hinder the industry as it continues to grow and will strain eligible testing centers.

- The interim final rule requires all testing to be conducted at Drug Enforcement Agency (DEA) registered labs. The DEA currently has a limited number of registered labs in Virginia, and with the 15-day turnaround time, these labs will be overwhelmed during harvest periods. We urge USDA to allow testing to be conducted at independent testing labs (in addition to DEA registered labs) to ensure producers and regulators can remain in compliance with USDA standards. If only DEA registered labs are allowed to conduct testing, especially if the timeframe remains so short, DEA labs will build up backlogs and Virginia farmers and processors in the hemp supply chain will lose market share and may be pushed out of the growing market.

- The interim final rule establishes a negligence threshold of 0.5%. If the THC level is found to be above 0.5%, a farmer could be prosecuted under the law. The 0.5% threshold is arbitrary and too low given that THC levels are subject to swings based on several factors, including location, weather, and timing. We would like to make two suggestions for consideration. First, we recommend this threshold be set at the highest possible threshold in order to protect good-faith farmers who follow the rules, plant certified seeds and clones, and engage in best practices to grow compliant hemp. Second, we recommend adding mediation options so that farmers acting in good faith who accidentally exceed the threshold can resolve the issue without fear of criminal prosecution.

- Lastly, we ask that USDA keep in mind how the implementation of the interim rule interacts with state-level planning. Some states, like Virginia, are heeding the call to develop evidence-based state plans. That said, the Virginia state legislature is only in session for a short period. Virginia will need to align the Code of Virginia with the USDA final rule once it is published. Due to the timing of USDA's comment period, the final rule will likely be published after it is too late to pass complementary legislation during the Virginia General Assembly 2020 session. We ask that USDA consider state timelines in its rulemaking, in particular to allow states the flexibility to prepare and implement their State Action Plan in a manner that is in line with federal guidance and mitigates uncertainty for producers.

We appreciate your commitment to the nation's farmers and agribusinesses, as well as your commitment to ensuring that the hemp industry grows in a safe fashion. At a time when farmers are experiencing low commodity prices, extreme weather, and volatile market fluctuations, providing clear and reasonable regulatory guidance to producers has become particularly important. We fear that implementing the current rule would result in increased costs for growers and would prohibit many farmers from entering the market, especially small operations.

We look forward to continuing to work with USDA throughout this process and we appreciate your consideration.

Sincerely,

Denver Riggleman
Member of Congress

Abigail D. Spanberger
Member of Congress

Donald Beyer
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Ben Cline
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