

United States Senate

WASHINGTON, DC 20510

December 17, 2019

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

Dear Secretary Perdue:

We write today to provide comments in response to the issuance of the United States Department of Agriculture's (USDA) interim final rule for the U.S. Domestic Hemp Production Program. While we applaud USDA for its work in developing this rule in a timely manner, we are concerned about some of the effects this interim final rule would have on hemp production in the Commonwealth of Virginia.

Virginia has taken full advantage of recent changes in federal law to become a national leader in industrial hemp research and production. As of November 2019, the Virginia Department of Agriculture and Consumer Services (VDACS) has registered 1,183 industrial hemp growers, 262 processors, and 117 dealers. Nearly 2,200 acres of industrial hemp were planted in the Commonwealth in 2019. In addition, VDACS projects that Virginia growers could plant up to 15,000 acres of hemp during the 2020 growing season. Industrial hemp presents an incredible opportunity for Virginia farmers, and it is important that guidelines and regulations for the hemp industry do not unduly burden our growers.

Following, in no particular order, are our concerns regarding the interim final rule. We appreciate your consideration of these concerns and look forward to working with you as USDA finalizes its U.S. Domestic Hemp Production Program.

- USDA's interim final rule requires growers to test hemp plants within 15 days of anticipated harvest. We are concerned that a 15-day testing window will not provide adequate time for growers to test each crop, submit the testing sample, and receive a response. A 15-day window would be burdensome for Virginia hemp producers and would lead to unnecessary delays in getting products to market. We believe a 30-day window would provide a more reasonable testing timeframe that would be less burdensome on producers and testing facilities.
- USDA's interim final rule requires that hemp plant testing must be conducted by a Drug Enforcement Administration (DEA)-registered laboratory. Currently, Virginia has a very limited number of DEA-registered labs. With the projected increase in hemp production in Virginia and the proposed 15-day turnaround time for testing, it will be incredibly difficult for a small number of DEA-registered labs to meet these requirements during harvesting season. A backlog at testing facilities could negatively affect Virginia

growers, processors, and dealers. We recommend that USDA remove the requirement that testing can only occur at DEA-registered labs and allow testing to be conducted at independent testing labs that meet USDA standards.

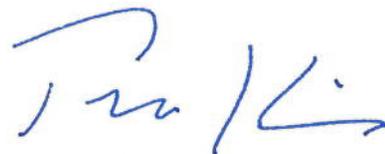
- The interim final rule establishes a negligence threshold for hemp at 0.5% delta-9 tetrahydrocannabinol (THC). If a grower is found to have hemp with a THC level above 0.5% they could face legal repercussions under the current guidelines. We are concerned that the 0.5% THC threshold is too low considering THC levels can vary widely depending on a number of factors including weather and geography. Hemp growers could take all the necessary steps and precautions to produce hemp according to the guidelines and still produce hemp plants that exceed the 0.5% THC concentration due to factors out of their control. We believe this threshold should be raised to at least 1.0% THC before a grower is subject to negligent violation to protect individuals who follow regulations and best practices. We also encourage USDA to examine mediation options to deal with growers who accidentally exceed the THC threshold.
- Finally, as USDA begins to implement a final rule we ask that the agency consider how implementation impacts individual states. Many states, including Virginia, are in the process of developing State Action Plans that adhere to the 2018 Farm Bill and USDA rulemaking. However, the Virginia General Assembly, along with many state legislatures, are only in session for a short period. Once USDA implements its final rule, the Virginia General Assembly will need to pass legislation aligning its hemp program with USDA regulations. It is possible that USDA will issue the final rule after the Virginia General Assembly has completed its 2020 session. We ask that USDA consider these timelines and provide maximum flexibility to states as they prepare to implement their State Action Plans.

Again, thank you for your careful consideration of these concerns. We appreciate USDA's commitment to developing a viable U.S. Domestic Hemp Production Program for hemp producers in Virginia and across the country. We look forward to working with you to ensure Virginia hemp growers are able to take full advantage of this opportunity.

Sincerely,



Mark R. Warner
United States Senator



Tim Kaine
United States Senator