April 19, 2018

Senate Majority Leader Mitch McConnell
S-230, The Capitol
Washington, DC 20510

House Speaker Paul Ryan
H-232, The Capitol
Washington, DC 20515

Senate Minority Leader Charles Schumer
S-221, The Capitol
Washington, DC 20510

House Minority Leader Nancy Pelosi
H-204, The Capitol
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Speaker Ryan and Leader Pelosi:

We are writing on behalf of our member institutions to express our concern that, despite some recent changes to federal law intended to facilitate legitimate research on industrial hemp (the plant genus *Cannabis sativa L including* all derivatives, extracts, and seeds of hemp as long as those portions of the plant remain below the 0.3 % THC threshold), significant legal, regulatory, and procedural impediments remain that prevent or make it difficult for researchers to contribute to public knowledge in this area. We believe that removing barriers to research is critical to advancing the public interest, and urge Congress to continue work with the research community to identify and advance potential legislative solutions and to encourage the relevant federal agencies to promote regulations and guidance that remove barriers to research.

There is an increased urgency for robust research on *Cannabis sativa* and certain substances that may be derived from cannabis (such as cannabinoids other than THC, including Cannabidiol [CBD], cellulose, essential fatty acids and proteins), especially as an increasing number of states have legalized cultivation of industrial hemp. The specific focus of this letter is on the barriers to conducting research on industrial hemp, industrial hemp materials and industrial hemp products.

Although the Agricultural Act of 2014 (the "Farm Bill") included a provision (Section 7606, enacted as Title 7 U.S. Code §5940, "Legitimacy of industrial hemp research") authorizing institutions of higher education and state departments of agriculture to cultivate industrial hemp for research, our institutions still face significant challenges in moving ahead with such research. These challenges stem in part from the overbreadth of the Controlled Substances Act's definition of "marihuana," especially as it relates to industrial hemp materials and products, and in part from federal agency regulations and guidance that appear to impede the intent of Congress to allow certain research on industrial hemp (or, at least, that create substantial confusion as to what is permissible).

In order for research to move ahead in this area, we believe there is a need for clear federal guidance specifying that researchers may obtain and work with industrial hemp seed, cultivars,

and "all parts of the plant" (such as extracts/derivatives), grown under Section 7606 of the 2014 Farm Bill, without having to go through the lengthy process of obtaining a Schedule I Drug Enforcement Agency (DEA) registration.

But such clear guidance is lacking. While the "Multi-Agency Statement of Principles on Industrial Hemp" (SOP) issued in August 2016 may have been intended to provide such guidance, in fact, it introduced a definition of industrial hemp that is inconsistent with the definition provided by the Farm Bill. In addition, the DEA's "Clarification of the New Drug Code (7350) for Marijuana Extract" issued in December 2016 created concern inasmuch as it appears to sweep industrial hemp extracts into the same Schedule I category as marijuana extracts. This too seems inconsistent with Congressional intent to permit research on industrial hemp.

The Controlled Substances Act (CSA) as written provides ***no delineation between industrial hemp, cannabinoids (chemicals derived from the cannabis plant) and marijuana/cannabis plants,*** thereby contributing to confusion and uncertainty with respect to whether a researcher conducting research using industrial hemp or industrial hemp derivatives might be imputed to have committed a criminal offense for performing research without a Schedule I registration.

The DEA "Clarification of the New Drug Code (7350) for Marijuana Extract" states that "the new drug code (7350) established in the Final Rule does not include materials or products that are excluded from the definition of marijuana set forth in the Controlled Substances Act (CSA)." And, according to the CSA, the term 'marihuana' "does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." 21 U.S.C. § 802(16).

Further, the DEA's clarification states, "if a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360)." By our interpretation this clearly means that, according to the DEA, CBD and other cannabinoids and extracts taken from portions of the plant excluded in the definition of "marihuana" by the CSA would fall outside of Schedule I regulation. However, the characterization in the CSA and the New Drug Code remains overbroad and, when taken with the definition in the Multi-Agency SOP, continues to contradict the definition of 'industrial hemp' as a plant separate from and independent of 'marihuana' as defined under the CSA.

In Title 7 U.S. Code §5940 "Legitimacy of Industrial Hemp Research," Congress provided that "'industrial hemp' means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."

By providing this distinct definition of "industrial hemp," separate and independent of "marihuana" under the CSA, Congress has acted to remove industrial hemp and all of its derivative products from enforcement and regulation under Schedule I and the CSA. This

position is supported by the recent Amicus Brief filed with the U.S. Court of Appeals for the Ninth Circuit in support of the Hemp Industries Association lawsuit against the DEA. The Brief is signed by a bipartisan group of 28 members of Congress who crafted the hemp research section of the 2014 Farm Bill.

The contradicting definitions and lack of clarity regarding industrial hemp materials leaves researchers uncertain whether work with industrial hemp materials without a Schedule I license is a criminal offense. To help ensure that research of industrial hemp materials pursuant to pilot programs does not violate the CSA, and in light of the confusing and contradictory federal definitions noted in this letter, researchers need clarification that:

- Institutions of higher education (and state departments of agriculture) conducting research may transfer and receive industrial hemp seed, cultivars and extracts (other than THC) between and within states with legalized programs within the U.S. without the need for either a DEA registration or a DEA import license,
- Authorized institutions of higher education (and state departments of agriculture) conducting research need not apply for a separate DEA Schedule I permit in order to obtain and work with industrial hemp seed, cultivars and extracts (other than THC) for research purposes.

We have sent this communication to the DEA (copied herein) urging the agency to promptly issue such clarification. We also strongly encourage Congress to include language in the next Farm Bill that will provide further protections and freedoms for industrial hemp. In addition, we encourage Congress to pass the bipartisan Hemp Farming Act of 2018 (HR 5485), which would explicitly remove industrial hemp from the Controlled Substances Act, clarify that retailers or end users of hemp products do not have to report to the DEA, and create a new category called "research hemp" for industrial hemp with THC concentrations between 0.3% and 0.6%.

We appreciate your consideration and we stand ready to help in achieving these changes.

Council on Governmental Relations
Association of Public and Land-grant Universities
Association of American Universities

Cc: Senate Agriculture Committee Chairman Pat Roberts
Senate Agriculture Committee Ranking Member Debbie Stabenow
House Agriculture Committee Chairman Mike Conaway
House Agriculture Committee Ranking Member Colin C Peterson

Senate Judiciary Committee Chairman Chuck Grassley
Senate Judiciary Committee Ranking Member Dianne Feinstein
House Judiciary Committee Chairman Bob Goodlatte
House Judiciary Committee Ranking Member Jerry Nadler

House Energy and Commerce Committee Chairman Greg Walden
House Energy and Commerce Committee Ranking Member Frank Pallone

Attorney General Jeff Sessions
Deputy Attorney General Rod Rosenstein
Drug Enforcement Agency Acting Administrator Robert Patterson

Secretary of Agriculture Sonny Perdue

About the Signatory Associations

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