



August 20, 2017

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Re: Proposed Regulations - 15.01.11 Industrial Hemp

I am writing to share comments on the proposed Industrial Hemp regulations that the Dept. of Agriculture published on July 21 in the Maryland Register. I am a Maryland resident and also the president of the advocacy group Vote Hemp that has been working to bring back commercial hemp farming across the US since 2000. We work with legislators and regulators in a number of states and have keen insight into how other states are regulating hemp pilot programs.

Governor Hogan signed hemp legislation authorizing the Department to create industrial hemp regulations (HB 443) in April 2016. I worked with Delegate Fraser-Hidalgo and others including the Maryland Farm Bureau to help pass this legislation and there is strong interest from the business and farming sectors. I am pleased that the Department has finally proposed regulations for Industrial Hemp.

However, I have some serious concerns about several of the assumptions and requirements of the proposed rules and offer the following comments:

1. **Section 7606 of the 2014 Farm Bill defines “industrial hemp” as distinct “Notwithstanding the Controlled Substances Act” and allows states to regulate it.** The proposed Maryland regulations assume that industrial hemp grown by departments of agriculture or universities is legally considered to be a controlled substance. What is critical for the Department to understand is that cultivation of industrial hemp under a state license is **not** prohibited by or regulated under the Controlled Substances Act (CSA).

By way of background, “industrial hemp” is a commonly used term for non-psychoactive (non-drug) varieties of the species *Cannabis sativa* L. that are cultivated for industrial rather than drug purposes. Industrial hemp plants grown in the United States, Canada and Europe are bred to contain less than three-tenths of one percent (0.3%) by weight of THC (the psychoactive element) in the flowering part of the plant, while marijuana drug varieties average about 15% THC. The hemp plant—although entirely useless as drug marijuana—is biologically the same species as the marijuana plant: *Cannabis Sativa* L. The part of the *Cannabis* plant that can be used as a drug, if the



plant is bred to have high THC content, is the flowers. The stalk, fiber, seed and oil of any Cannabis plant, and especially a plant bred as hemp to have very low THC, in fact contain so little THC as to be useless as a drug. The CSA expressly provides that those latter parts of the marijuana plant—the stalk, fiber, sterilized seed and oil-- are *exempt* from the Act and not treated as illegal marijuana. Specifically, the definition of “Marihuana” excludes “the mature stalks of such [cannabis] 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....” 21 U.S.C. §802(16). However, until 2014, it was illegal to cultivate the hemp plant within the United States because the plant itself is the same species as marijuana and thus itself was treated as a controlled substance. That situation changed with enactment of the federal Agricultural Act of 2014, P.L. No. 113-79 (commonly known as the “2014 Farm Bill”). In the Farm Bill, Congress specifically, and for the first time since enactment of the CSA, authorized cultivation of industrial hemp under agricultural pilot research programs authorized by state law, “[n]otwithstanding the **Controlled Substances Act. . . or any other Federal law. . .**” P.L. No. 113-79, §7606, codified at 7 U.S.C. §5940(a). Hemp is also defined as distinct from marijuana under the act and therefore is not considered a controlled substance when grown under state authorized pilot programs.

Requirements under the proposed regulations such as a “security plan” and use of a “secured facility” are unreasonable and burdensome for the applicant and are not required under Sec. 7606 of the Farm Bill or House Bill 443 which authorized the Department to regulate this activity. Hemp varieties of Cannabis are useless as a drug and therefore should not be subject to requirements which would be applied to the cultivation of marijuana.

- 2. The Department assumes that the proposed regulations have “minimal or no impact on small business.”** This assumption is inaccurate. More than 15 states have created Industrial Hemp pilot programs under the Farm Bill. A number of states allow private farmers to conduct research on behalf of the state department of agriculture or in partnership with an institution of higher learning including Colorado, Kentucky, North Dakota, Oregon and Vermont. Licensees have been able to grow, harvest and process hemp and offer processed raw materials such as shelled hemp seed, hemp seed oil, hemp fiber and hurd to research the marketing of hemp which is one of the primary research goals of Sec. 7606. The US market for hemp products is estimated at \$687 million in 2016. The Departments refusal to work with or allow licensing of farmers and private businesses denies them the



opportunity to conduct valuable research or to develop new products, which may be patented or otherwise, monetized. Furthermore the restriction on delegation by an institution of higher education keeps farmers and small businesses from working with them on a hemp pilot program. Clearly this will have a significant negative impact on farmers and small businesses. **The Department should revise the regulations to remove the restriction on delegation and to allow farmers and businesses to participate in research.**

3. **The proposed Maryland regulations restrict hemp cultivation only to a “certified site” which is defined as “any property owned or controlled by an institution of higher education.”** This definition is overly restrictive and denies farmers and businesses the opportunity to conduct research on hemp using privately owned land in cooperation with an institution or the Department. Sec. 7606 of the Farm bill authorizes participants to “study the growth, cultivation, or **marketing** of industrial hemp.” Hundreds of American farmers and small businesses have been licensed to not only grow and harvest hemp but also to process it and produce raw materials or finished goods (see attached Vote Hemp crop report). Furthermore, the proposed regulations only allow an institution of higher learning to apply for a license. It also requires that licensees “may not delegate to any person.” These requirements are overly restrictive and unreasonable. Hundreds of licensees in other states are currently licensed to grow, harvest and process hemp. **Maryland farmers and businesses should not be left out of this important opportunity while farmers in other states are allowed to take advantage of hemp research under the Farm Bill.**
4. **The proposed regulations do not allow any hemp material to be removed from the certified site except for analytical testing for THC levels.** This provision unreasonably restricts research by denying the processing of the hemp to determine its qualities including allowing research on hemp stalk, fiber and hurd which are fully legal under federal law 21 U.S.C. §802(16) as noted in point #1 above. This restriction is unreasonable and should be removed from the regulations. **Processing of hemp is necessary to conduct research on the plant and its potential. Other states allow materials to be transported and processed and Maryland should do the same.**
5. **The proposed regulations on Required Studies specifies that a license holder must provide a report on its findings and conclusions “no later than 3 months after the date the application was approved.”** This timeline is not realistic given that the cultivation time for hemp can vary



from 90-120 days or more depending on the variety. It also does not allow time for a licensee to acquire seed which typically must be imported. **The Department should amend this to provide significantly more time and flexibility for reports.**

I request that the department take into consideration these comments and revise the proposed regulations. I also request that the Department hold a timely hearing at which stakeholders will be included.

Sincerely,

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