

UC Office of the President

U.S. Department of Agriculture (USDA)

Title

UC Comments on Establishment of a Domestic Hemp Production Program (Docket No. AMS-SC-19-0042, October 31, 2019)

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OFFICE OF THE VICE PRESIDENT – RESEARCH AND INNOVATION

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January 24, 2020

Bruce Summers
Administrator, Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue SW, STOP 0237
Washington, DC 20250-023710903

RE: Docket No. [AMS-SC-19-0042](#): Establishment of a Domestic Hemp Production Program (October 31, 2019)

Dear Administrator Summers:

I write on behalf of the University of California (UC) system in response to the Interim rule with request for comments, “Establishment of a Domestic Hemp Production Program,” published in the *Federal Register* on October 31, 2019.

The UC system is comprised of ten research-intensive campuses, six medical schools, three affiliated U.S. Department of Energy national laboratories¹, and a Division of Agriculture and Natural Resources. UC has established an unparalleled reputation for research and innovation, contributing to the state and nation through discoveries and new technologies that improve health, the environment, public safety, and quality of life. Specific to hemp research, UC is interested in advancing science to understand hemp production from seed to harvest. UC is equipped to conduct this research with notable cannabis research centers and initiatives located at UC Berkeley (Cannabis Research Center), UC Davis (UCD Cannabis and Hemp Research Initiative), UC Irvine (Center for the Study of Cannabis), UC Los Angeles (Semel Cannabis Research Initiative), UC Merced (UC Nicotine and Cannabis Policy Center), UC Riverside (Center for Cannabis Research and Regulation), UC San Diego (Center for Medicinal Cannabis Research), and UC Santa Cruz (Cannabis & Hemp Initiative for Interdisciplinary Plant Studies).

We applaud USDA’s efforts in overseeing the implementation of a domestic hemp program in the U.S. We understand that developing regulations for hemp production is no small task. In reading the Interim rule, however, it remains unclear how institutions of higher education who want to cultivate hemp for research purposes fit into the proposed regulatory scheme. (This is, of course, other than the fact that the Interim Final Rule makes clear that for the 2020 planting season, institutions of higher education can continue to cultivate hemp for research purposes only under the authorities of the 2014 Farm Bill. The 2014 Farm Bill authority expires 12 months after the effective date of this rule. Thus, it is our understanding that as of October 31, 2020 institutions of higher education will need to operate in compliance with their state’s USDA-approved hemp regulations once the 2014 Farm Bill expires, or when state plans are adopted and approved by USDA.)

¹ The three UC affiliated U.S. Department of Energy national laboratories include Lawrence Berkeley National Laboratory, Los Alamos National Laboratory, and Lawrence Livermore National Laboratory.

As a world-class research institution, UC respectfully submits the following comments pertaining to the need for clarification about regulatory requirements that apply to hemp cultivation for research purposes.

General Comment

UC respectfully requests that USDA acknowledge the fact that requirements for commercial hemp cultivation do not apply to universities cultivating hemp for research purposes.

The 15-Day window for Testing Prior to Harvest

The Interim Final Rule requires that “[w]ithin 15 days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing.” Hemp production occurs during particular seasons, including peak seasons for harvesting. Because of this seasonal element, UC is concerned that testing facilities may not be able to meet the quick turnaround time for THC testing during these peak seasons. The testing timeframe is further complicated by the new requirement that only DEA-licensed laboratories, of which there are a limited number, may conduct THC testing of hemp. **UC urges USDA to extend the timeline for testing from 15 days prior to the anticipated harvest to 30 days.** If USDA does not extend the timeframe, then UC requests clarification on whether samples collected within the 15 day time period can still be harvested if a testing laboratory is not able to provide results within the required period.

Testing by a DEA-Licensed Laboratory

Per the Interim Final Rule, testing for THC concentration levels must be conducted by a DEA-licensed laboratory. There are a limited number of DEA-licensed laboratories. Furthermore, based on our understanding of DEA requirements, it is unclear as to whether a DEA-licensed laboratory will be able to accept materials for testing from non-Schedule 1 registration holders. **UC asks that USDA coordinate with other relevant federal agencies, including DEA, to provide clarification on whether DEA-licensed laboratories would in fact have the capacity and capability to fulfill this requirement.**

In the context of cultivating hemp for research purposes, institutions of higher education may also want to engage in the THC testing as part of the research they are conducting so as to better understand the plant and to advance knowledge of testing methods. **UC requests that USDA either remove the requirement that only DEA-licensed laboratories can conduct THC testing, or exempt institutions of higher education from the same testing requirements as commercial hemp entities.**

Presumptive Negligence Based on 0.5% THC Plant Content

A negligence standard with significant potential criminal penalties should not be based on the quantitative 0.5% THC content of plants. Rather, negligence should be shown under a reasonable person standard and degree of care. Scientifically, it is not possible for a grower or research institution that acquires seeds or young plant materials to predict the final THC content of the crop. To further complicate matters, there are currently no universal standards for laboratory testing protocols, thus final results can differ based on particular variables. Finally, because of plant genetics and growing conditions, it is possible that a large proportion of the acreage devoted to hemp, in both commercial and academic settings, will contain at least some plants that exceed 0.5% THC, depending on when and how they are sampled and tested. Given that 0.5% THC is still a very low concentration of the substance, the bar should be **much** higher for criminal consideration.

Disposal Requirements

The Interim Final Rule requires disposal of cannabis plants that test above the THC limit for hemp in a manner compliant with Federal law, and references reverse distributors and law enforcement. Similar to the concern raised above, there have been questions about whether and under what circumstances reverse distributors will be able to accept cannabis material. We note that under current regulations reverse distributors are not permitted to accept materials that might be marijuana from anyone other than a Schedule 1 holder. In addition, in California where both medicinal and non-medicinal adult use and possession of cannabis is legal under state law, law enforcement have, to date, been reluctant to engage in collecting cannabis materials given their legal status under California law. **In order to compliantly dispose of cannabis plants that test above the THC limit for hemp, UC asks that USDA coordinate with DEA to provide clarification on whether DEA would allow for a waiver from the current limitation on reverse distributors, to allow reverse distributors to accept cannabis material for disposal from individuals or entities who cultivate hemp in accordance with their state's approved plan, but who do not hold a Schedule I DEA registration.**

No Distinction Between Hemp Grown for Consumption Versus Industrial Purposes

As written, the Interim Final Rule does not attempt to distinguish between hemp production for potential human consumption (e.g., CBD oils) versus hemp crops that are grown for other industrial purposes such as hemp-crete, paper, fabric, bioplastics, etc. **It would be reasonable to provide exemptions from certain testing requirements in the regulations if there is no intent for the human ingestion or consumption of end products that will serve as building materials or wearables.** This would also alleviate some concerns of the research community where intent is to better understand the plant itself with no consideration for consumption.

Downstream Research Implications

While the comments expressed above are specific to hemp cultivation, USDA's proposed regulations have further implications for research universities wanting to conduct legitimate research on hemp and hemp products. For example, researchers who wish to test the efficacy of hemp-derived cannabidiol (CBD) for certain medical illnesses or disorders would be indirectly but still negatively affected, especially with requirements that may result in diminished supply of hemp-based research materials. **UC strongly urges USDA to think about the research consequences of its proposed rule.**

The UC system appreciates the opportunity to comment on this notice and welcomes further discussions should USDA have any questions regarding UC's comments.

Sincerely,



Lourdes G. DeMattos

Associate Director

Research Policy Analysis & Coordination