



Bill Richmond, Chief
U.S. Domestic Hemp Production Program
Specialty Crops Program
AMS, USDA
1400 Independence Avenue SW, STOP 0237
Washington, DC 20250-0237

January 29, 2020

Reference: Doc. No. AMS-SC-19-0042; SC19-990-2IR

Dear Mr. Richmond:

The Council on Governmental Relations (COGR) is an association of 188 research universities and affiliated academic medical centers and independent research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

Over two years ago, COGR formed a cannabis working group to explore the issues and burdens associated with conducting cannabis-related research, especially as several of our member institutions are currently conducting research on hemp as provided under the 2014 Farm Bill. On behalf of our member institutions, we appreciate the opportunity to provide comments on the USDA Interim Final Rule (IFR) on the establishment of a domestic hemp production program.

We appreciate the expedited effort USDA has made to produce the IFR given the complexities in this area. We also applaud the USDA for making it clear that interstate transportation and commerce involving hemp and hemp products pursuant to law is permissible and not subject to prosecution by local, state, or federal law enforcement officials.

In order to establish a domestic hemp production program that will be successful in years to come, we ask that USDA consider the following concerns and recommendations from our member community:

- It would be helpful for USDA regulations to specifically address the inherent differences between requirements for for-profit commercial hemp cultivation that is geared toward commercial CBD products, and the cultivation of hemp for research purposes. Some specific examples of requirements that hinder research are discussed below.

Recommendation: Allow states to adopt different rules that better facilitate research by universities or exempt such research from some of the requirements that apply to commercial entities.

- The IFR requires enforcement agency or approved DEA laboratories to collect samples for delta-9 tetrahydrocannabinol concentration (THC) level testing no more than 15 days prior to the anticipated harvest of hemp plants. State agriculture departments have requirements that conflict with this. For example, the Oregon Department of Agriculture requires crop testing within 28

calendar days prior to harvest. In Colorado, testing can occur as much as 30 days prior to harvest. This is further complicated by the new requirement that only DEA-registered laboratories may conduct THC testing of hemp and the fact that harvest time for all hemp crops will occur at approximately the same time. With a limited number of DEA-registered labs available to conduct THC testing and the large number of fields that will need to be tested within a short time, it is unrealistic to think that testing can be accomplished within 15 days.

Further, we understand that some growers use a harvesting technique where seeds are harvested first and the stalks later. A rigid 15-day window does not accommodate such a practice.

Recommendation: We urge USDA to extend the timeline for pre- and post-harvest testing to more realistic timeframes such as those that State Departments of Agriculture have established.

- Even more restrictive is the impact of DEA regulations providing that a DEA-registered lab can only accept materials for testing from a schedule 1 license holder, if the testing is not for law enforcement testing purposes. Many academic institutions conduct research on hemp as permitted under the Farm Bill, without the need for a schedule 1 license, potentially leaving them without an approved option for THC testing.

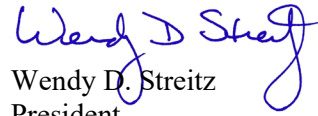
Recommendation: Remove the requirement that labs must be registered by the DEA and/or exempt institutions of higher education from this requirement.

- The IFR indicates that a testing measurement of 0.5% THC or more would be considered “negligence” – triggering potentially severe penalties. This is an inappropriately harsh penalty, especially as the IFR requires the use of total THC as a measurement, the 0.5% standard does not allow any room for unintentional error. There are additional concerns with the 0.5% THC standard. First, there is no way for a grower or institution who acquires seed or young plant material to accurately predict the final THC content of the crop. One might plant a crop believing the plant material will not exceed 0.3% THC, only to have that not be the case upon harvest. In addition, there can be large variances of cannabinoid concentrations within and among plants, as well as in sampling and testing, which, in and of itself, does not indicate negligence. At the moment, there is no established standard for cannabinoid testing such that, even in reputable labs, it will not be entirely clear what the final results mean. For instance, if cannabinoid concentrations are not adjusted with precise determination of plant tissue moisture content, the values could be inaccurate and inconsistent. Finally, 0.5% THC is still a very low concentration of the substance. Plants with fully functional THC synthase genes would be expected to produce levels of THC a full order of magnitude more than 0.5%, and if the plants are homozygous for this gene (i.e., possess a copy of the gene from each parent) the concentration of THC would more likely be between 10-25%, or 20-50X the currently prescribed criminally negligent level. A huge proportion of the acreage devoted to this crop, 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.

*Recommendation: The bar should be **much** higher for criminal penalties.*

Thank you for the opportunity to comment. If you have further questions, please feel free to contact Jackie Bendall at jbendall@cogr.edu.

Sincerely,

A handwritten signature in blue ink that reads "Wendy D. Streit". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Wendy D. Streit
President