

HEMP & MARIJUANA RESEARCH FREQUENTLY ASKED QUESTIONS (FAQs) & GUIDELINES

February 20, 2017

Office of the General Counsel (OGC) & the Office of the Vice President for Research (OVPR)

Preamble:

Within the Controlled Substances Act (CSA), there is no current legal delineation between marijuana and hemp – it all falls within the CSA definition of *Cannabis sativa*. The CSA criminalizes the possession, growing and use of *Cannabis sativa* without registration with the Drug Enforcement Administration (DEA) for a Schedule I controlled substance. It is also a federal crime for any individual to assist others to violate federal law. Therefore, if a CSU employee provides advice which promotes in some way a violation of law, that itself can constitute a violation of law.

That said, the 2014 USDA Farm Bill (the “Farm Bill”) did contain language providing for cultivation for research purposes of “industrial hemp” by universities in states that allow such cultivation. The state of Colorado has legislation permitting the research and commercial growth of industrial hemp, but requires written registration with the Colorado Department of Agriculture (CDA) by anyone who is going to cultivate hemp. This registration requirement includes growing hemp for research purposes, and CSU has submitted its required research application, and received approval for open field and indoor (i.e. growth chambers, greenhouses) cultivation in locations specifically identified within CSU’s CDA application.

The purpose of this document is to provide guidance and direction to CSU administrators, researchers, and employees, as well as communication to the greater (public) community by providing FAQs. Questions about this topic can be directed to Linda Schutjer, Senior Legal Counsel, (970) 491-6270.

FAQs

HEMP RESEARCH:

1. *Will CSU researchers be performing hemp research in the near future?* Yes, CSU anticipates industry-sponsored research related to industrial hemp cultivations studies.
2. *What is “Industrial Hemp?”* Industrial hemp is defined by the state of Colorado and the Farm Bill as the plant *Cannabis sativa L.* and any part of such plant with an average delta-9 tetrahydrocannabinol (THC) concentration of 0.3 percent or less, on a dry weight basis.
3. *Does the DEA address hemp any differently than marijuana?* The DEA’s position continues to evolve. The DEA has suggested that hemp and its component parts are subject to controls as a schedule one drug. However, legal expert agree that this position is inconsistent with the Farm Bill and prior law. Additionally, Congress has passed legislation “defunding” enforcement efforts by the DEA and other agencies against individuals growing hemp in compliance with State law.
4. *Who can perform research on Industrial Hemp?* Universities and State departments of agriculture in states that have laws in place allowing such research are permitted by the DEA to perform research. The DEA has also agreed that private farmers who are operating with the approval of their States, can grow hemp.

5. *What hemp-based research can be performed at CSU?* At this time, there are no limits on hemp research at CSU so long as the material being used has a THC concentration of no more than 0.3%.
6. *Can CSU researchers and/or extension agents provide advice and/or assistance to non-university hemp growers inside (and external to) the state of Colorado?* CSU researchers and extension agents may provide advice to Colorado farmers cultivating hemp under the Colorado Department of Agriculture (CDA) registration program; however, CSU researchers and extension agents may NOT assist cultivators of marijuana, or any entity or individual growing hemp outside of the CDA registration program.
7. *Can CSU researchers perform research in a paid or unpaid sabbatical situation in a foreign country whose laws permit industrial hemp research in any capacity?* Yes.
8. *Can CSU researchers use non-CSU subcontractors to grow hemp for research purposes?* Yes, as long as they are properly registered with the CDA.
9. *Can CSU researchers obtain hemp products from third parties for research or analytical service purposes?* Yes, provided the third party is properly registered with the CDA.
10. *Can a CSU grower obtain viable hemp seed from any source?* In most cases, viable hemp seed should be obtained from the Colorado Department of Agriculture (CDA) under its import license with the DEA. If you wish to obtain seed from or provide seed to a colleague at an institution outside of Colorado, please contact the Office of General Counsel to discuss this first as guidance in this arena is changing.
11. *Can CSU researchers perform market studies or literature searches about hemp under an externally funded sponsored project?* Yes.
12. *Can CSU researchers perform hemp research funded by industry?* Yes, provided that the funding does not come from an entity or individual involved in the marijuana industry.
13. *Can CSU license intellectual property rights resulting from hemp research?* Yes.

MARIJUANA RESEARCH:

1. *Can CSU researchers perform marijuana research?* Yes, but such research must be performed only after obtaining a DEA Schedule I registration of a controlled substance.
2. *Can CSU researchers provide marijuana samples, extracts, derivatives, or DNA materials to other labs at CSU or entities external to the university?* No, unless such transfer occurs to another Schedule I holder, and is otherwise permissible under state and federal rules.
3. *How can a CSU researcher apply for Schedule I registration?* Individual PIs may register with the DEA for a Schedule I controlled substance by following the CSU procedures established through EHS found online at <http://www.ehs.colostate.edu/WControlledSub/Home.aspx> (see Chris Giglio for assistance).
4. *How long does it take to obtain DEA approval for a Schedule I controlled substance?* According to reports from CU and other institutions, the approval process is a lengthy process, sometimes requiring six to 12 months in total. CSU researchers interested in perform marijuana research

should apply as soon as possible for a Schedule I due to this time delay in approval. Grants awarded for marijuana research will be declined if the Schedule I is not in place at time of award.

5. *Can CSU researchers perform research related to marijuana that does not require the handling of marijuana material?* Yes, research or analysis on data, including economic analyses, human and animal clinical trials, and literature searches are allowable without a Schedule I where marijuana does not come into the possession of the researcher.
6. *Can a CSU researcher who maintains a DEA Schedule I permit handle hemp materials falling under the Final Rule and/or the Farm Bill in the same facility?* Yes, provided that all Schedule I rules and protocols are followed for those materials handled in such lab categorized as a Schedule I controlled substance.
7. *Does CSU accept gifts from those in the marijuana industry?* No, CSU cannot accept funds from the marijuana industry.

CANNABINOIDS

Under the Farm Bill, lawyers have taken the position that all non-growing parts of the cannabis plant that are less than .3% THC, are covered as industrial hemp.

INDUSTRIAL HEMP.—The term “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.

Under this reading of the Farm Bill language, it is clear that the University are free to work with cannabinoids containing less than .3 percent THC. Recently, In December of 2016, the DEA issued a new Administration Controlled Substances Code number for “Marihuana Extract.”

(58) Marihuana Extract – 7350

Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than the separated resin (whether crude or purified) obtained from the plant.

The stated purpose of this rule, according to the notice itself, was to allow DEA Schedule 1 holders to track these materials separately from the marijuana itself. However, referencing this new rule, representatives from the DEA have taken the position that even hemp cooking oils that are sold in grocery stores would now be considered a Schedule 1 controlled substance. The DEA’s actions are being challenged in court and it is expected that this rule will be struck down as contrary to their authority – as have previous similar rules issued by the DEA. Further watering down the impact of this rule is the inclusion in the Omnibus Appropriations Act of 2016 of a prohibition of use of Federal funds being used to prohibit the transportation, sale or use of industrial hemp that was lawfully grown under state law. As a result, the legal community has largely decided that the rule should have little or no impact on use of and research into cannabinoids or cannabinoid containing compounds that contain less than .3% THC.

Given the uncertainty in this area, before starting a new project with cannabinoid’s you should contact the Office of General Counsel to determine the current state of the law.