

Establishment of a Domestic Hemp Production Program

NERA comments submitted to Regulations.gov December 26, 2019

Section II, Part B describes the requirement of all laboratories that test for Delta-9 Tetrahydrocannabinol in hemp to be DEA licensed. Further the section notes that testing for THC in hemp is to be performed within “15 days prior to the anticipated harvest of cannabis plants.” We anticipate that these requirements will serve as significant bottlenecks in the industrial hemp production industry. That is, testing is the rate limiting step in the growth of the industry. Are there alternatives to the sampling regimen? For example, could the window of testing be extended to 30 days prior to harvest? Additionally, DEA funds should be allocated to support the cooperative extension system in educating producers on how to complete testing in a way that the DEA will accept. We recommend that the DEA establish this funding mechanism and put forward a process for reviewing its testing process requirements with producer and Land-grant university input.

Section II. Part B describes the conditions for laboratories that will sample and test for Delta-9 Tetrahydrocannabinol. The section specifically states that “The laboratories conducting hemp testing must be registered by the DEA to conduct chemical analysis of controlled substances (in accordance with 21 CFR 1301.13). Registration is necessary because laboratories could potentially handle cannabis that tests above the 0.3% concentration of THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance.” Does this requirement extend to University laboratories (on- and off-campus) that routinely assist agricultural enterprises and perform plant disease diagnostics or pesticide residue analyses? Guidance for those laboratories should be provided in the rule. Further, Land-grant universities that house plant diagnostic laboratories that might have hemp samples submitted for non-THC analyses should not be required to have ISO 17025 accreditation. While the Land-grant universities that run testing laboratories appreciate that ISO 17025 is a means to demonstrate competence and integrity, it is only one of many laboratory accreditations. Additionally, the accreditation requirement adds overall costs to the operation of the diagnostic laboratory. Last, if a campus diagnostic laboratory does not comply with the ISO 17025 accreditation requirement, local hemp producers lose access to valuable agricultural assessments and analyses.

Section II. Part C describes the general disposal of non-compliant plants. Plants testing “hot” for THC are required to be collected, removed off-farm and destroyed. Interestingly, the AMS could not provide estimates of the additional costs of “hot” hemp removal from a farm and the physical destruction of the harvested materials. We believe that the removal/destruction requirement is agronomically, environmentally and economically unsound. We seek alternatives to this requirement informed by producer and Land-grant university input.