

SIU University General Counsel

GUIDANCE ON INDUSTRIAL HEMP: RESEARCH AND NON-RESEARCH

Hemp

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Set forth below is guidance for Southern Illinois University (SIU) researchers, faculty, staff and students regarding legal and policy issues related to industrial hemp research conducted at SIU and industrial hemp cultivation outside of research. This guidance document describes under what circumstances researchers may conduct industrial hemp research and when researchers may need to consult with the Vice Chancellor for Research or Associate Dean for Research, as applicable, in regards to hemp research. This guidance document also separately addresses conduct related to cultivation of industrial hemp for purposes other than research and when individuals need may need to consult with the Vice Chancellor for Research or Associate Dean for Research, as applicable, prior to cultivation.

Please note:

The legal and regulatory landscape related to industrial hemp is still evolving and thus this guidance will be updated as soon as practical in accordance with the law and therefore it is recommended that prior to engaging in any research or other cultivation of hemp, the individual contact the Office of General Counsel to ensure this guidance is still current.

I. Regulatory and Statutory Background

The federal Agricultural Act of 2014 (commonly known as the 2014 Farm Bill), contains a section that amended federal law to allow institutions of higher education and state departments of agriculture to grow and cultivate industrial hemp "for purposes of research conducted under an agricultural pilot program or other agricultural or academic research" in states that have enacted laws allowing growth and cultivation, **notwithstanding** the Controlled Substances Act, the Safe and Drug-Free Schools and Communities Act or other Federal law. The 2014 Farm Bill also established an "agricultural pilot program" to "study the growth, cultivation or marketing of industrial hemp."

In 2015, pursuant to 2014 Farm Bill and its industrial hemp research provisions, Illinois enacted the Industrial Hemp Pilot Program (Pilot Program). The Pilot Program permits researchers within institutions of higher education to grow or cultivate industrial hemp for purposes of research, including studying the growth, cultivation or marketing of industrial hemp. An "**institution of higher education**" is defined by the Pilot Program as "a State institution of higher education that offers a 4-year degree in agricultural science." SIU meets this definition and therefore may apply for registration to conduct research with the Illinois Department of Agriculture (Department). "**Industrial hemp**" is defined by the Pilot Program as "cannabis sativa L. having no more than

0.3% total THC available, upon heating, or maximum delta-9 tetrahydrocannabinol content possible.” The Department promulgated Rules related to the Pilot Program. The Pilot Program, together with the Rules and other applicable federal law inform the content of these guidelines as they relate to research of industrial hemp at SIU.

In 2018, also pursuant to the 2014 Farm bill and its “agricultural pilot program,” Illinois enacted the Industrial Hemp Act (Act). This Act expanded the growing and processing of industrial hemp outside of higher education and researchers, and allowed for farmers and others to plant and process industrial hemp in Illinois. The Department promulgated Rules related to the Act. The Act and the Rules apply to institutions of higher education and therefore allows SIU to cultivate industrial hemp outside of research, as other entities are permitted to do, with the proper registration and license. The Act, together with the Rules and other applicable federal law inform the content of these guidelines as they relate to non-research cultivation of industrial hemp at SIU.

In December 2018, Congress passed the federal Agricultural Improvement Act of 2018 (commonly known as the 2018 Farm Bill), legalizing hemp production pursuant to United States Department of Agriculture (USDA) regulations. Prior to the 2018 Farm Bill, industrial hemp was included within the federal Controlled Substances Act definition of marijuana as a Schedule I controlled substance and under the purview of the Drug Enforcement Administration (DEA). The 2018 Farm Bill amended the federal Controlled Substances Act to exclude hemp and hemp derivatives from the definition of marijuana. Thus, industrial hemp is no longer a Schedule I Controlled Substance. Nevertheless, both research and non-research cultivation of hemp must be conducted in compliance with both federal and state law and regulations.

The 2018 Farm Bill created the Domestic Hemp Production Program, which allows for hemp to be grown outside of a research setting under federal law. Under the 2018 Farm Bill, states are required to either submit their hemp plans for approval to the USDA or allow the USDA to directly regulate hemp in that state. The USDA was instructed to implement regulations **for hemp cultivated under the 2018 Farm Bill**, and the USDA issued an Interim Final Rule on October 31, 2019. The 2018 Farm Bill and USDA Interim Final Rule were meant to replace the hemp cultivation provisions of the 2014 Farm Bill. However, Congress extended the relevant applicable provisions of the 2014 Farm Bill through **September 30, 2021**. A second extension to **January 1, 2022** was implemented by the Consolidated Appropriations Act, 2021. The USDA has since issued its final rule to replace the Interim Final Rule, with an effective date of March 22, 2021. Although the USDA Final Rule has been issued, it states that the January 1, 2022 extension under the Consolidated Appropriations Act, 2021 extends the authority for hemp production under the 2014 Farm Bill programs. Because the Pilot Program and Act were both implemented pursuant to the 2014 Farm Bill, these laws currently remain in place. The Department did submit a state Hemp Plan to the USDA in anticipation of the effective date of the USDA Interim Final Rule, and the USDA has approved the Department’s current Hemp Plan for hemp cultivation under the 2018 Farm Bill. In the interim, while the Department works on changes to its Rules consistent with its approved state Hemp Plan and the USDA Final Rule, the Department’s current Rules remain effective. Therefore, at this time, SIU will continue to follow the Pilot Program and Act and the Department’s corresponding Rules.

II. Research with Industrial Hemp Under the Pilot Program

Industrial hemp research may be conducted pursuant to the Pilot Program and its Rules. Any researcher who wishes to pursue research that involves cultivation, growth, production or marketing of industrial hemp should, prior to commencement of any such research, consult with the Vice Chancellor for Research or Associate Dean for Research, as applicable, before proceeding with such research. Before and during conducting research involving industrial hemp at SIU, the following

requirements must be met:

1. **Registration.** Notify the Department¹/Apply for and receive a Registration from the Department (Registration granted only if industrial hemp is cultivated for purposes of agricultural or academic research and the research project studies the cultivation or marketing of industrial hemp).
 - a. Application for Registration is provided by the Department and requires a \$100 application fee.
 - b. Application decisions are generally decided within 30 days.
 - c. The duration/term of the approved Registration will be specified by the Department, generally not to exceed 3 years. If a Registration extension is needed, an amendment to the original Application may be filed no more than 60 days prior to the expiration of the original Registration term.
2. **Law Enforcement Notification.** Notify any local law enforcement, in writing, **at least 10 days prior** to the commencement of cultivation of any industrial hemp.
3. **Agent in Charge.** Identify an Agent in Charge who shall ultimately be responsible for all activities associated with SIU's cultivation of industrial hemp and communication with the Department – this will be the individual identified in the Application for Registration who will have control and management over the day to day operations of the research. The Agent in Charge shall also ensure that all individuals involved in any manner in cultivating industrial hemp are employees or students of SIU. The Agent in Charge should be a faculty member.
4. **Record Keeping.** Maintain, for a minimum of two years after creation, required recordkeeping and make such records available to the Department. This shall include:
 - a. The name of the cultivars cultivated and the volume of each cultivar purchased, acquired and/or used;
 - b. The volume of industrial hemp cultivated, harvested and disposed of (including date, location and method of disposal);
 - c. Quarterly reports to the Department detailing research results related to the issues and matters set forth in its Application for Registration, in accordance with the schedule set by the Department; and
 - d. An annual report for the period of July 1 through June 30, by October 1 of each year.
5. **Transportation.** If industrial hemp is transported off campus, a copy of the Registration must accompany the hemp.
6. **Inspection.** SIU will be subject to random inspections by the Department, the Illinois State Police and local law enforcement agencies. If you have questions regarding the scope of an investigation or inspector access, or other questions and concerns about an upcoming inspection, please contact the Office of General Counsel for assistance

Definitions

¹ All references to the Department in this section are references to the Illinois Department of Agriculture.

"Industrial Hemp" means cannabis sativa L. having no more than 0.3% total THC available, upon heating, or maximum delta-9 tetrahydrocannabinol content possible.

"Research Project" means a plan stating the objectives and purposes of the research being proposed and the methods and procedures for carrying out the research.

III. Non-Research Cultivation and Research with Industrial Hemp Under the Industrial Hemp Act

Industrial hemp cultivation for non-research purposes, as well as research on industrial hemp, may be conducted pursuant to the Industrial Hemp Act and its Rules. Although the Act was meant to expand cultivation beyond research, research is not prohibited under a license issued under the Act. Any individual who wishes to obtain an Industrial Hemp Cultivation License or Processor Registration should consult with the Vice Chancellor for Research or Associate Dean for Research, as applicable, before proceeding with an Application. Before and during cultivation of industrial hemp at SIU, whether for research or non-research purposes, the following requirements must be met:

1. **License/Registration.** Apply for and receive an Industrial Hemp Cultivation License from the Department² before cultivating. Apply for and receive a Processor/Handler Registration from the Department before processing or handling industrial hemp. **For Industrial Hemp Cultivation Licenses:**
 - a. Application for Registration is provided by the Department and requires a \$100 application fee for each noncontiguous land area and each indoor cultivation operation area. If the Application is considered incomplete by the Department, an additional fee may be assessed for a corrected and/or new Application.
 - b. In addition to the Application fee, once a License is approved, the following fees apply:
 - i. \$1000 for a 3 year License
 - ii. \$700 for a 2 year License
 - iii. \$375 for a 1 year License
 - c. Application decisions are generally decided within 30 days.
 - d. A License shall be good for a maximum of 3 calendar years from the date of issuance.
 - e. Any changes to the Application as outlined in the original Application must be approved by the Department prior to implementation of any changes.

For a Processor Registration:

- a. Registration form is provided by the Department and requires a fee of \$100.
- b. A Registration shall be good for a maximum of 3 calendar years from the date of issuance.
- c. In addition to the Application fee, once a Registration is approved, the following fees apply:

² All references to the Department in this section are references to the Illinois Department of Agriculture.

- i. \$1000 for a 3 year Registration
- ii. \$700 for a 2 year Registration
- iii. \$375 for a 1 year Registration

2. **Land Requirements.**

- a. The minimum land area for industrial hemp cultivation is a contiguous land area of one quarter of an acre for outdoor cultivation and 500 square feet for indoor cultivation.
- b. SIU **cannot** plant or grow hemp on any site not listed in the Application.
- c. No land area may contain cannabis plants or parts of cannabis plants that SIU knows or has reason to know are of a variety that will produce a plant that, when tested, will produce more than 0.3% THC concentration on a dry weight basis. Any such variety for any purpose associated with the cultivation of industrial hemp is strictly prohibited.

3. **Seeds, Clones, Transplants or Propagules for Planting.**

- a. Licensed industrial hemp cultivators are solely responsible for procuring seeds, clones, transplants or propagules for planting.
- b. All seeds, clones, transplants and propagules used to cultivate industrial hemp in Illinois shall be certified under the Association of Official Seed Certifying Agencies (AOSCA) standards and guidelines for industrial hemp or shall be accompanied by a certificate of analysis from an accredited certified laboratory from a state with a regulated industrial hemp program that certifies the industrial hemp grown will not contain in excess of 0.3% THC.

4. **Sale and Transfer.**

- a. SIU may only transport live or harvested industrial hemp if SIU has a Hemp Cultivation License or Processor Registration.
- b. Industrial hemp that has not been processed may be transferred from the place of cultivation to the place of processing at any time by SIU when SIU has an Industrial Hemp Cultivation License or Processor Registration. The place of processing must also hold an Industrial Hemp Cultivation License or Processor Registration.
- c. The sale or transfer of live plants or viable seeds *within Illinois* can only be to others who hold an Industrial Hemp Cultivation License or Processor Registration from the Department. For sales or transfers *outside of Illinois*, the individual must be authorized by a state agency under the laws of the destination state to receive the plants or seeds.
- d. The Department permits the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of 0.3%) and other marketable hemp products to members of the general public, both within and outside the State of Illinois.
- e. SIU cannot ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds **from a variety that is currently designated by the Department as a prohibited variety or a variety of concern** to any location outside the State of Illinois.
- f. SIU may not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9 THC concentration in excess of 0.3%.

5. **Reports.** When SIU holds an Industrial Hemp Cultivation License, it must submit to the Department:
 - a. A Harvest Report (to include harvest dates and locations of each variety) at least 30 days prior to a harvest, on the form provided by the Department. If the harvest dates change in excess of 5 days, SIU must notify the Department.
 - b. By February 1 of each year, an Industrial Hemp Cultivator Final Report, to include:
 - i. Total acres or square feet planted in previous year;
 - ii. description of each variety planted and harvested in the previous calendar year;
 - iii. Total acres or square feet harvested in the previous calendar year; and
 - iv. Total yield in the appropriate measurement, such as tonnage, seeds per acre, or other measurement approved by the Department.

6. **Inspections.** SIU will be subject to regular Department inspections. An employee must be present for an inspection and allow the Department unrestricted access for inspection. SIU is responsible for the cost of any testing that may be required during the Department's inspection. If you have questions regarding the scope of an investigation or inspector access, or other questions and concerns about an upcoming inspection, please contact the Office of General Counsel for assistance. The Department should provide you with at least 5 days' notice of an inspection.

Definitions

"Cultivating" means planting, growing, harvesting and storing a plant or crop.

"Contiguous Land Area" means land areas used for cultivation of industrial hemp that are not separated by more than 100 feet by waterways, fences, railroads, lanes, roads, highways, interstates or other separations.

"Handle" means to possess, transport or store industrial hemp for any period of time on premises owned, operated or controlled by a person or entity, or the agent thereof, licensed to cultivate industrial hemp or registered to process industrial hemp.

"Indoor Cultivation" means the process of cultivating industrial hemp in a greenhouse or in an enclosed building or structure capable of continuous cultivation throughout the year. Continuous cultivation is not required.

"Industrial Hemp" means the plant *Cannabis sativa* L. and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3% on a dry weight basis that has been cultivated under a license issued under the Industrial Hemp Act or is otherwise lawfully present in Illinois, and includes any intermediate or finished product made or derived from industrial hemp.

"Process" means the conversion of raw industrial hemp plant material into a form that is presently legal to import from outside the United States under federal law.

"Variety" means a group of plants or an individual plant that exhibits distinctive observable physical characteristics or has a distinct genetic composition. This includes the terms "cultivar" and "strain".

IV. USDA Requirements for Importation of Hemp Seed

Importation of Hemp Seed from Canada

Hemp seeds (ONLY products containing THC levels not greater than 0.3 percent) can be imported into the United States from Canada if accompanied by either: 1) a phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or 2) a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for hemp seeds grown in Canada.

Importation of Hemp Seed from Countries other than Canada

Hemp seeds (ONLY products containing THC levels not greater than 0.3 percent) may be imported into the United States from countries other than Canada if accompanied by a phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected. Hemp seed shipments may be inspected upon arrival at the first port of entry by Customs and Border Protection (CBP) to ensure USDA regulations are met, including certification and freedom from plant pests.