



Update on Vermont Hemp Rules

On September 6, 2019 the Vermont Agency of Agriculture, Food, and Markets (VAAFMM) issued a response to comments from the public on the proposed Hemp Rules. Below we have tracked Rural Vermont's formal comments on the Hemp Rules to the responses provided by VAAFMM. If you haven't already, we strongly recommend that you:

- Read the Agency's proposed rules on production and processing of hemp [here](#).
- Read Rural Vermont's comments in full [here](#).
- Read the Agency's response to all public comments [here](#).

VAAFMM will submit the final Hemp Rules to the VT Legislative Committee on Administrative Rules (LCAR) and then to the USDA for federal approval. The intent of VAAFMM was to have the new rules in place in time for the 2019 harvest. Rural Vermont will continue to monitor this process and anticipate the release of the final Hemp Rules and the subsequent development of the *Cannabis Quality Control Program*. Stay tuned for possible needs for further public engagement from the Hemp community.

Section 1: Authority and Purpose

1.1: *Secretary must adopt rules establishing how the Agency will conduct research within this program.*

Rural Vermont's concerns: We recommended additional details in the rules that respond to the Secretary's mandate to adopt rules on how research is conducted within Vermont's hemp program.

VAAFMM response: The Agency will "provide some guidelines regarding collecting and reporting information for research, provide goals, process, and report format. The Agency will also preserve its ability to amend its process and goals as the industry changes, to not limit the collection of information that would be most useful for the development of the industry."

Section 4: Program Registration Requirements

4.1. *To register as a Grower or Processor in the Hemp Program, a person must complete an application on a form provided by the Agency and submit the application form, all required documentation, and a registration fee to the Agency.*

Rural Vermont's concerns: We do not believe that individuals cultivating hemp for personal use should have to register with and pay a fee to the VAAFMM.

VAAFMM response: The Agency's interpretation of the Farm Bill's requirement to "maintain relevant information regarding land on which hemp is produced in the State..., including a legal description of the land..." enforces their requirement that all individuals who cultivate hemp, even those for personal use, must register with the Agency at this time. The Agency states that further research into the National

Organic Program's definition of "producer" may provide a different analysis of who is subject to registration. The Agency states that they "will research whether it is possible to exempt personal use cultivation from the Agency rules and the state plan."

4.1 (b) - *A person whose application is rejected as incomplete may reapply for registration at any time.*

Rural Vermont's concerns: What happens to the registration fee if registration is rejected and the registrant chooses not to reapply?

VAAFM response: "A person whose application is rejected as incomplete may reapply for registration at any time. The Agency was given the authority to deny registrations, and while this is possible, the Agency will work with applicants to obtain the necessary information to enable the Agency to review and approve the application. However, an unresponsive applicant risks denial of their application. Based on existing practice within the Agency across permitting programs, fees are not refunded to the applicant, and cannot be applied to a future application."

4.1 (e) - *Any information provided to the Agency as part of a person's application may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant.*

Rural Vermont's concerns: We believe it is very unreasonable to have information provided through the registration process be made publicly available, especially without notice to the registrants in advance.

VAAFM response: "A change in 6 V.S.A. §564(f) on May 30, 2019 (after the public comment period opened) limits what the Agency may disclose under a public records request. Specifically, 'all records produced or acquired by the Agency of Agriculture, Food and Markets related to the location of parcels where hemp will be grown, including coordinates, maps, and parcel identifiers, shall be confidential and shall not be disclosed for inspection and copying under the Public Records Act.' Confidential business information is protected from inspection and copying under 6 V.S.A. §61 or 1 V.S.A. §317(c)(9). It is also possible that other exemptions in 1 V.S.A. §317(c) may apply to "public records" that come into the Agency's possession as part of the administration of the Hemp Program. Please know that the Agency will abide by Vermont law when public records requests are made, and to the extent the public record is protected or confidential, the Agency will not disclose. The Agency will also follow the Public Records Act when responding to requests for public records, as required by law and disclose what is otherwise not exempt nor confidential under the law."

4.3 - *A person convicted of a felony relating to a controlled substance under state or federal law before, on, or after December 20, 2019 shall be ineligible to register with the Hemp Program during the 10-year period following the date of the conviction unless the person has lawfully registered with the Hemp Program prior to this date.*

Rural Vermont's concerns: We strongly object to this provision in the Rules. We understand this section is included because it corresponds to a specific provision in the 2018 Farm Bill, (Title X, Sec.10113, pg. 432). We believe that if USDA rejects the VT Hemp Program Plan for not including language that excludes convicted drug felons from participating in VT's hemp program, that we stand our ground on the principle that those who have already "done their time" have every right to participate in the growth of a legal industry involving an agricultural commodity. Furthermore, "ex post facto" laws (those that impose new punishment for past offenses) are specifically forbidden by the United States Constitution in Article 1, Section 9, Clause 3 (with respect to federal laws) and Article 1, Section 10 (with respect to state laws).

VAAFM response: "The Agency will consider removing this provision from the Vermont Hemp Rules, but this requirement is in 2018 Farm Bill and is referred to in 6 V.S.A. §564 (c) (4), 'the Secretary may deny an

application for registration or renewal if the applicant... does not, as determined by the Secretary, satisfy the requirements of section 10113 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 for participation in the Program.’ The Agency will implement what is necessary to attain primary regulatory control over cultivation of hemp in Vermont.”

Section 5: Growing, Transferring and Selling, Recordkeeping, and Reporting Requirements for Growers

5.3 - A Grower of hemp crops produced outdoors for seed must notify all Growers of biomass and flower within a radius of 5 miles of their cultivation areas. The Agency will provide names and contact information to the Grower based on previous year Registrants.

Rural Vermont’s concerns: We are concerned about the logistical challenges and potential conflicts between growers of hemp and neighboring growers of medicinal/recreational cannabis.

VAAFM Response: The Agency will remove this requirement from the rules.

5.1 - A Grower is responsible for demonstrating compliance with the acceptable potency level for hemp crops offered for sale or transferred to a Processor or the public.

Rural Vermont’s concerns: We are concerned with the lack of clarity in this rule.

VAAFM response: The Agency’s has since developed full Testing and Sampling Protocols that were not included as part of the rulemaking process. They can be found here:

https://agriculture.vermont.gov/sites/agriculture/files/documents/PHARM/hemp/VTHP_SOP_Pre-HarvestSamplingTesting_07022019.pdf

5.4 (b) - Offer a list of any pesticides used in the cultivation of the hemp crops, clones, or plants.

Rural Vermont’s further comment: We remain concerned about the inclusion of “Azamax” (active ingredient Azadirachtin) on the list of acceptable active ingredients. Last year the state of Oregon identified this product as “misbranded” and adulterated with pesticide residues. Please see this Pesticide Advisory:

<https://www.oregon.gov/ODA/programs/Pesticides/Documents/2018Advisories/AzaMax.pdf>

VAAFM Response: “VAAFM does not have an approved list of pesticides, nor a process to approve pesticides on hemp. However, the Agency has developed a list of active ingredients acceptable to use on hemp crops, and all pesticides must be disclosed upon request.” *Azamax remains listed as an acceptable product example.*

<https://agriculture.vermont.gov/sites/agriculture/files/documents/PHARM/hemp/Hemp%20products.pdf>.

Section 6: Processing, Transferring and Selling, Recordkeeping, and Reporting Requirements for Processors

6.2 - A Processor shall only use lipid, ethanol, or carbon dioxide (CO2) botanical extraction methods, or other extraction methods for which the Processor has received written approval from the Agency.

Rural Vermont concern: What other methods the Agency is considering for approval? Will these “other methods” be reported/published?

VAAFM response: “The Agency will add mechanical extraction methods that do not include solvents as an approved method for processing hemp crops. So long as other approved methods are not considered “confidential business information” [under 6 V.S.A. §61 or 1 V.S.A. §317(c)(9)] the Agency will develop a list of the other approved methods of extraction and make available on its website.” *This information has not yet been made available.*

Section 7: Testing Requirements for Growers

7.3 - A Grower may propose testing parameters for pesticides, heavy metals, mycotoxins, and bacterial and fungal contaminants that are based on a risk analysis and use for approval by the Agency.

Rural Vermont concern: We appreciate that this provision allows for innovation coming from the Hemp industry but we believe the VAAFM needs to specify how such approval of testing parameters will occur and how they will be published.

VAAFM response: “The Agency...will work towards outlining parameters either in the rule and/or as part of the Cannabis Quality Control Program.” *The Cannabis Quality Control Program will be created separately from these Rules.*

Section 10: Requirements for Handling Hemp Crops, Hemp Products and Hemp-Infused Products

10.3 (b) Within 30 days of receiving the request for a confirmed crop or product, the Agency will generate a confirmation that may accompany the shipment of the hemp crop, hemp product, or hemp-infused product.

Rural Vermont concern: Waiting 30 days for a confirmation may not be practical for many hemp businesses. We respectfully suggest that 10 days would be more practical.

VAAFM response: This time frame remains unchanged.

Section 12: Vermont Hemp Products and Hemp-Infused Products

12.1. The Secretary establishes and adopts the Vermont Hemp brand and grades under its authority in 6 V.S.A. Chapter 21.

Rural Vermont concern: Additional information about any cost or time frame that will be involved with such certification needs to be disclosed in these rules now so growers and processors can incorporate it into their business plans.

VAAFM response: The Agency accepts the comments received by stakeholders regarding the grades of hemp and will strike these subsections from the rule. It will explore alternative options in the future that might address scale of operation (single source hemp products), and includes all types of hemp products including grain, fiber and hemp derived cannabinoid products.

Rural Vermont concerns that were not addressed in the VAAFM’s Responsiveness Summary:

Section 5: Growing, Transferring and Selling, Recordkeeping, and Reporting Requirements for Growers

5.6 (b) iii - *A Grower shall maintain records of all transfers of hemp crops to a Processor or out-of-state recipient. The records shall be kept by harvest lot number and shall include: an estimate of the amount of hemp transferred on a dry weight basis in pounds.*

Rural Vermont concerns: We are concerned that the weight estimate requirement will be difficult to accomplish accurately and we question the value. The product is being weighed and reported by the processor and it seems that is the information that should be collected, not a guess from the grower when they've already reported on acreage in production, particularly if off-base estimate would result in VAAFm action. It seems to us that if the grower records the number of plants transferred that would be a more useful metric to track – especially for the VAAFm's research goals.

Section 6: Processing, Transferring and Selling, Recordkeeping, and Reporting Requirements for Processors

6.4 - *A Processor may process hemp crops only at registered processing sites. A Processor must report in writing to the Agency a closure of a processing site within business 10 days of its closure.*

***Rural Vermont concern:** Rural Vermont suggests that the requirement for reporting on a processing site closure be within 30 days.

**This concern was not addressed directly, but it possibly will be in the Cannabis Quality Control Program, which the Agency will develop independently of the Vermont Hemp Rules.*