



The Organic Sprout

MOFGA's Newsletter for Organic Producers

Interim Final Rule Released for Domestic Hemp Production

by Chris Grigsby, MCS Director

On October 31, 2019, the USDA's Agricultural Marketing Service (AMS) published an interim final rule, 2019-23749, titled *Establishing a Domestic Hemp Production Program*. The interim rule has a 60 day comment period ending December 31, 2019. The USDA is seeking public comment as they shape the final rule.

We are providing a summary here of the major parts of the rule, **and encourage producers or interested stakeholders to submit comments**. The USDA has asked for specific public comment in several areas.

General

Key provisions of the interim rule focus on guidance for States and Tribal Territories to obtain plan approvals. Any state or territory has the opportunity to submit plans to oversee hemp production on behalf of the USDA. If a state does not submit or obtain an approved plan, a grower seeking licensing will go through USDA. Specific guidance includes:

- Procedures for tracking the land where hemp is grown
- Procedures for testing (using post-decarboxylation or other similarly reliable methods)
- Procedures for disposing of non-compliant plants
- Compliance provisions (the handling of violations and inspection of farms)
- Procedures to share information
- Ability to certify that the State or Tribe has available resources to

- manage their plans
- Procedures for ensuring a representative sample of hemp production is physically collected

Positives and Negatives

While there are many positive aspects to the interim rule, there are components that many in the community feel miss the mark. USDA did consult and work with several other governmental programs, and some stakeholder groups have flagged sections of the interim rule clearly having influence (DEA as example), overstepping the intent of Congress and the language of the Farm Bill. We list the "good" and the "bad" below in hopes of highlighting things that the USDA should hear comment on.

The "Good":

- Crop insurance coming in 2020, Whole-Farm Revenue Protection and FSA Noninsured Crop Disaster Assistance
- Hemp is now eligible for NRCS conservation programs
- FSA acreage reporting
- Limited Felony Ban to only licensees (not farm workers)
- Hemp exports not affected
- Reaffirms states may not block interstate transportation
- No federal seed certification program initially, citing geographic performance of certain varieties
- Inclusion of requirement of "measurement of uncertainty" to accompany test results, effectively a margin of error, which may provide some flexibility for THC levels

(continued on Page 6)

Inside this Issue

- 2 Field Notes
- 3 Dairy Origin of Livestock Rule
- 4 Record Keeping for Organic Livestock Producers
- 5 Bio-based and Compostable Plastics
- 7 Cattle Corner: Viral Pneumonia
- 8 Ensuring Organic Integrity
- 9 NOSB Report - October 2019
- 10-11 Organic Updates
- 12 Program News
- 13 Dear Certification Specialist
- 14 Calendar



Livestock Record Keeping, (Continued from Page 4)

Brood Stock ID - for Ruminants and Non-Ruminants

When using non-organic brood stock to produce organic offspring, each dam must bear an ID linking to records documenting that the dam has been under organic management beginning no later than the last third of each gestation for the offspring from that gestation to be certified organic.

Poultry ID

In poultry production, use of different breeds and leg bands are considered acceptable methods of flock identification. For purchased chicks, we will look for hatchery receipts or record of organic management beginning at the 2nd day of life (in other words, when the chicks arrive from the hatchery). Poultry over one day old must be purchased from certified sources.

[§205.236 Origin of Livestock](#) & [§205.103 Record Keeping](#)

Feed Sources, Supplies and other Inputs

Feed records will document all purchased and farm-produced feeds. Harvest records must document feeds produced on farm. Purchased feeds should be accompanied by a receipt and the organic certificate of the supplier. Amounts should be sufficient for livestock needs over the time period recorded. Likewise, receipts and labels for supplies, inputs, and materials used in your organic livestock production must be kept and available at inspection. These include minerals, salt, herbal preps, medicines, facility inputs, and any other inputs used in the production of the organic product.

[§205.237 Livestock Feed](#)

Special Note for Ruminant Livestock - "The Pasture Rule"

Ruminant livestock groups are required to meet the "Pasture Rule"—a NOP standard stating that ruminant livestock must graze throughout the entire grazing season (which can be no less than 120 days), and ruminant livestock must obtain a minimum average of 30% of their intake from pasture for the season, on a dry matter basis.

Producers must keep the following records to demonstrate compliance with the pasture rule:

1. Turn out dates and feed records to show the length of the grazing season.
2. Ration records indicating the amounts of hay, silage and grain fed to animals during the grazing season and non-grazing season.
3. Evidence that pasture quality is being maximized.
4. Records noting days when animals are confined from pasture and the reason for confinement.

[§205.237\(c\)&\(d\) Pasture rule and grazing season record](#)

Healthcare

Health care records include routine treatments and non-routine treatments, with individual animal ID linked, and should be kept in the operation's herd records or a herd book. Routine treatments may be documented in standard protocols. Poultry producers must keep records on flocks of birds that can verify compliance with the Standards. Certain "National List" allowed or restricted synthetic substances may be considered under specific circumstances. Some items have restricted uses. Please contact MCS for approval prior to using a restricted medication.

[§205.603 Allowed Synthetic Substances and Medications](#)

An example of proper use of a restricted material and record keeping:

Dairy goat showing physical signs of worms. Garlic treatment was not effective on this particular individual, vet fecal demonstrates infestation. Contact MCS for product approval. Treatment with Fenbendazole is recorded on individual goat health card to show she may never be organic for slaughter, and barn wall calendar to verify 36-day milk withholding.

Income

In order to verify that organic production on your farm balances with sales, gross income from organic livestock sales must be documented and viewable by your inspector. Producers must be able

(continued on Page 10)

The "Bad":

- Testing requirements are onerous, requiring tests of every lot harvested, not allowing for random testing
- Testing is of total THC (post-decarboxylation), not just Delta-9, which may make several varieties ineligible for hemp
- Sample requirements do not require a homogenized whole plant sample, making a representative test of total plant biomass not possible (more THC in flowers than stocks and stems)
- Samples must be taken by a USDA-approved sampling agent or law enforcement agent authorized by USDA to collect samples
- Negligence v. Intentional determined at 0.5% THC content (moving to criminal above 0.5%). Crops still testing above 0.3% THC content must be destroyed
- Harvesting must be completed within fifteen (15) days of sampling, a very short window, not accounting for weather, equipment breakdown, and delays with obtaining laboratory results
- Ninety (90) day application period for USDA licenses after initial year-round allowance (Oct-Dec). May not be the right time of the calendar year given harvest timing
- DEA-registered lab mandate (can typically take 9-12 months to get registered)
- Disposal of "hot" hemp (crops testing over legal limit) can only be done by DEA or approved "handler" of marijuana

It is assumed that Maine will be submitting a plan to USDA to oversee production in our state. Commissioner Beal released a statement on October 29, 2019 noting that the department was pleased to finally have guidance for states. We encourage growers to contact the state for more information.

(continued on Page 11)



Proposed Changes to the National List for Organic Crops and Handling

On October 18, 2019, the U.S. Department of Agriculture will publish a proposed rule in the Federal Register to amend the National List of Allowed and Prohibited Substances (National List) based on public input and the October 2018 recommendations from the National Organic Standards Board.

This proposed rule would:

- Allow **blood meal made with sodium citrate** to be used as a soil amendment.
- Prohibit the use of **natamycin** in organic crop production.
- Allow **tamarind seed gum** to be used as a nonorganic ingredient in organic handling when an organic form is not commercially available.

The USDA welcomes comments on the proposed amendments. The 60-day comment period will close on December 17, 2019. Comment here: https://www.regulations.gov/document?D=AMS_FR-DOC_0001-1913

Comment Period Open on NOP Information Collection Requirements

Reporting and record keeping are critical elements of an effective certification system. The NOP and certifiers gather many types of information to effectively oversee the USDA organic regulations. For example, certifiers collect organic system plans from farms and businesses and report on certification and enforcement activities to the NOP.

As a Federal program, the NOP must request permission from the Office of Management and Budget (OMB) to require reporting and to track how long these reporting activities—called information collections

—take. Information collections help NOP to maintain sound and sensible recordkeeping requirements that support risk-based enforcement of the organic regulations, while minimizing the regulatory burden on certifiers and certified farms and businesses.

On October 17, NOP published a document in the Federal Register announcing its intent to request an extension of the currently approved information collection reporting and recordkeeping requirements. The Federal Register Notice describes the reporting and record keeping burden associated with NOP activities and requests comments on the estimated information collection burden. The current OMB approval expires on January 31, 2020. The 60-day comment period will close on December 16, 2019.

Comment here: <https://www.regulations.gov/document?D=AMS-NOP-19-0090-0001>

Final Rule Amends the National List for Organic Crops and Handling

The U.S. Department of Agriculture today published a final rule in the Federal Register to amend the National List of Allowed and Prohibited Substances (National List) based on public input and the April 2018 recommendations from the National Organic Standards Board.

This final rule:

- Allows **elemental sulfur** to be used as a slug or snail bait to reduce crop losses.
- Allows **polyoxin D zinc salt** for plant disease control.
- Reclassifies **magnesium chloride** from a synthetic to a non-synthetic substance.

The final rule is effective November 22, 2019. Access the final rule here: <https://www.regulations.gov/document?D=AMS-NOP-18-0051-0015>

Importation of Seed

Separate from the interim final rule, USDA announced new rules on the importation of hemp seeds on October 29, 2019. These rules clarify that the Drug Enforcement Agency (DEA) can no longer require permits for importing hemp seed. This link describes the notice sent out by USDA and provides an update on how the new process will work.

<https://www.votehemp.com/hemp-news/usda-update-on-importation-of-hemp-seeds/>

Any new federal rule proposal must go through a public comment period. We urge growers and interested parties to inform themselves about the proposed rule and to submit comments for consideration. MOFGA intends to submit comments on behalf of the hemp producers we work with. Please contact our office if you have questions or have specific feedback to consider as we form our comments.

Useful Links to Stay Informed:

USDA Domestic Hemp Production interim final rule:

https://www.regulations.gov/document?D=AMS_FRDOC_0001-1919

USDA's hemp production program webpage:

<https://www.ams.usda.gov/content/hemp-production-program>

USDA's page for hemp producers detailing programs available for farmers:

<https://www.farmers.gov/manage/hemp>

USDA's webinar overview of interim rule:

<https://zoom.us/recording/play/TAE-flEP96bkonvHTbp6JVkoR4JX4O2hX-FaCZAdXjDhowNT2F6SDhHmGDA-qCCv9nB?continueMode=true>

Vote Hemp:

<https://www.votehemp.com/federal-hemp-legislation/>

<https://www.youtube.com/watch?v=QPcxtx1eIHQ> (Webinar overview of rule, including legal analysis)

Hemp Industry Daily:

<https://hempindustrydaily.com>

