

Montana Hemp Advisory Committee
Thursday, November 21, 2019 1:30 p.m. – 2:40 p.m.
Skype Conference Call
Helena Montana

Members in attendance:

Ben Thomas, Ex Officio, Director of the MT Department of Agriculture
Perry Miller, Ex- Officio, MSU Bozeman MT
Arlin Fratzke, Member, Stevensville MT
Bart Icopini, Member, Hysham MT
Dean Nelson, Member, Homestead MT
Jackee Beck, Member, Deer Lodge, MT
Jamie Fitterer, Member, Bozeman MT
Ken Elliott, Member, Wolf Point, MT
Kim Phillips, Member, Helena MT

Members absent:

Jeremy Anderson, Member, Fort Benton MT
Ross Johnson, Member, Great Falls, MT

Staff in attendance:

Andy Gray, Hemp Program Coordinator, Department of Agriculture
Andy Fjeseth, Bureau Chief, Agriculture Development Division, Department of Agriculture
Cort Jensen, Department Attorney, Department of Agriculture
Chelsi Bay, Public Relations Specialist, Department of Agriculture
Christy Clark, Agricultural Sciences Division, Department of Agriculture

Public members in attendance:

Joe Leonard
Wilbur Ellis

Director Ben Thomas called the meeting to order at 1:32 p.m.

USDA Interim Final Rule

Ben Thomas reviewed the USDA Interim Final Rule and noted that it is different in nature from a proposed rule. The department will submit comments by December 30, 2019 and intends to revise and resubmit its State Plan. The department can operate under its current pilot program authority through October 2020.

- Department staff had a phone call with staff members at USDA's Ag Marketing Service (AMS) earlier in the day. Overall, the department is concerned some requirements in the rule are not required by the Farm Bill. Some notable points included:
 - Required sampling 15 days prior to harvest. Montana's current plan would not comply with this rule and the department will include reasons necessitating post-harvest samples (i.e. weather events) in its comments.

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- According to USDA, all hemp testing above .3% is considered noncompliant and must be disposed of (destroyed). This impact would be severe as it would require several thousand acres of hemp be destroyed which would cause significant financial hardship for Montana producers.
 - Currently, department mitigation allows for corrective action through processing for hemp testing between .3% and 1%.
- The USDA rules include testing THC and THCA
- Reporting forms provided by USDA for producers are reasonable but an additional requirement for producers to report directly to FSA is unnecessary.
 - Reported acreage to FSA would become the grower's plot. The department recognizes it is difficult for growers to know their exact plot size at the time of application.
- USDA will not recognize Montana's current categories (A, B, C, D). All hemp requires random sampling.
- The USDA rules limit the ability for private labs to test. While Montana is less concerned than other states, believing the Analytical Lab qualifies, it is also unclear which lab the USDA plans to use.
- The USDA rules lack a fee structure. If Montana does not regulate hemp at the state level, and growers apply directly to USDA, the department estimates the number of growers would grow significantly since licensing will be cheaper without any set restrictions or fees.
- USDA does not propose sampling rates and it's unclear how sampling will take place.

Discussion:

- Ken Elliott asked if Ben expects Montana's Governor, Senators, and Representative will support the department's response and comments on the rules.
 - Ben replied he does expect support and staff for both Sen. Tester and Sen. Daines asked how they can help while he was in Washington D.C. recently.
- Ken Elliott expressed concerns over sampling the top third of the plant rather than sampling the whole plant.
 - Ben replied that he's opened to discussing alternative sampling methods more but recognizes samples must be representative of the THC content of the whole plant. Montana's current sampling protocol excludes the top 3 inches of the plant which the USDA advised is not acceptable.
- Ken Elliott asked if the department will consider suing the USDA to protect farmers.
 - Ben Thomas responded saying he's willing to work with USDA in good faith now, by submitting comments, and giving the USDA a year to respond and make changes. Litigation may be appropriate thereafter.
- Ken Elliott shared the MT Hemp Advisory Committee's intent to submit comments to the USDA rules.

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- Ben Thomas said the department is available to help committee members understand the rule and will share the department's comments with committee members.
 - Cort Jensen advised committee members that all discussions must occur at the public level.
- Ken Elliott expressed concern about the sample size, one in the field, in the USDA rules.
 - Cort Jensen responded by saying the department does not know the challenges associated with the proposed sample protocol since it hasn't tried it, and the department will submit its current sample size protocol in its State Plan.
- Perry Miller asked how the department will work with other states in responding to the USDA's rule.
 - Ben Thomas indicated the department will work with other significant states to pressure USDA and he'll arrange a phone call with Kentucky's Commissioner soon.
- Ken Elliott asked if Montana's lab intends to submit comments.
 - Ben Thomas replied that he would coordinate with Jona Verreth, Analytical Lab Bureau Chief, but the lab's comments would be incorporated with the department's comments.

Processor Licenses Update

Andy Fjeseth informed attendees that the department received seven processor license applications, and all were licensed.

- Licenses will carry over into 2020 since the 2019 is nearing an end.
- A list of all licensed processors will be available, with consent, on the department's website soon.

Discussion:

- Jamie Fitterer inquired about a list of criteria for processors.
 - Ben Thomas responded saying the department will share this and elaborated that the initial processing license issued by the department assists businesses in pursuing additional licenses.
- Ken Elliott asked about the grower's license deadline.
 - Andy Gray responded saying applications are due April 30, 2020. Applications will be available mid-January.

2% Assessment Ballot Referendum

The department mailed ballots proposing a 2% assessment on the first sale of all hemp grown, delivered, or stored in Montana through commercial channels to all hemp licensees.

- Ben Thomas shared the results so far indicate growers are not in support of the assessment.

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- Ballots are due to the department on December 13, 2019
- If the referendum fails, there will be no research and development money for hemp and the advisory committee will be dissolved.

Discussion:

- Perry Miller asked if there's any sense of 2% being the problem.
 - Ben Thomas responded that it's unclear.
 - Jamie Fitterer said he has talked to other growers who were confused about where the money goes.
 - The department resolved to send an email to growers explaining the purpose of assessment funds (grower education, research, marketing) and reach out to the Northern Ag Network.

Questions/Public Comment

No other public comments were made.

Adjourn:

Ben adjourned the meeting at 2:40 p.m.



Chelsi Bay, Public Relations Specialist, Notetaker



Ben Thomas, Director



Date



Date