



January 14, 2020

Joint Committee on Agency Rule Review
RE: Hemp Cultivation and Processing Rules
OAC: 901:14-1 and 901:14-2

Dear Committee Members

OEFFA appreciates the opportunity to provide comment on the draft rules for hemp production in Ohio. We represent more than 4,000 members most of which are organic and sustainable farmers as well as constituents of sustainable agriculture, many of whom grow on a small scale as well. Certified organic farmers make up 70% of our membership, and with recent agricultural census data ranking Ohio sixth in the nation in the number of organic farms, and second only to California in the number of farms transitioning to organic, we see a great opportunity for farmers in Ohio to join this growing agricultural market. Similarly, Ohio's recent changes regarding the legalization of hemp as an agricultural product for both fiber and CBD uses presents an exciting opportunity for Ohio farmers, and it is with this opportunity in mind that we respectfully offer the following comments. We ask that you carefully consider the impact of these rules on small-scale and organic farmers as our understanding is that much of the CBD market is specifically seeking to utilize certified organic product. If our rules do not effectively accommodate that market, it will mean a missed opportunity for many growers in the state as well as lost economic benefits.

Our concerns lie with the subsections listed below:

Land use restrictions in Section 901:14-1-06:

Subsection (F)- States that a licensed cultivator shall not plant or grow hemp in an outdoor growing location of less than one-quarter acre unless prior approval is received in writing from the department.

Subsection (G) states that a licensed cultivator shall not plant or grow hemp in an indoor growing location of less than one thousand square feet unless prior approval is received in writing from the department.

Subsection (H) states that a licensed cultivator shall not plant or grow hemp in a growing location of less than one thousand plants unless prior approval is received in writing from the department.

Calculations and Discussion:

These calculations are in conflict with the growing practices of many target producers. We doubt that the state, through its regulatory process, would allow the selection of winners and losers in the free marketplace. Toward that end, please ensure that producers of all scales will have the same access to this emerging market and that these rules do not disadvantage small scale producers.

It is important to understand the production realities of CBD hemp and how they are different than those of hemp for fiber. Fiber hemp producers should not have a difficult time meeting these requirements while CBD hemp production is akin to specialty crop production. It is a labor intensive, horticultural crop that can be grown and marketed on a variety of scales, and as part of a variety of crop rotations and cropping systems.

OEFFA provided an example to the Department of Agriculture of which an excerpt is provided below to ensure understanding of these production realities.

CBD hemp production occurs on four to six-foot centers, and, much like tomato production, increased space between plants can lead to improved air flow and reduced disease pressure, so more space between plants is be advisable, especially as producers for CBD hemp will be looked to for minimal synthetic inputs. CBD hemp plants also grow quite large and leaf-out to a great extent when thriving, further demonstrating the need for greater plant spacing. The minimum acreage of one quarter acre (10,890 square feet) with the required spacing would yield about 280 plants illustrating why the figures in the proposed draft rule are not workable.

Further, organic producers are required to implement a soil-building crop rotation and there is increasing emphasis on all producers to adopt these practices. In order to do so, and remain a hemp producer, these farmers would need double, but preferably triple or quadruple the amount of land in CBD hemp production in order to rotate into other plant families, cover crops, and cash crops over time, while still remaining in hemp production, and thus continuing to build expertise and relationships with hemp processors. A one acre minimum is the practical growing space available to an organic CBD hemp producer to follow both the organic standards and the Ohio hemp rules in their current form. This could be further impacted by the distance from a residence, further precluding a producer from utilizing land near his or her residence for hemp production, requiring even more land in order to sustainably produce hemp.

Additionally, 1,000 mature plants would never fit in a typical, twenty by 30 foot hoop house or high tunnel which is what we believe the department intended with an “indoor growing location” in subsection G.

Producer Fees Section 901:14-1- 04:

The fees issued to producers may be upwards of \$1600 in a worst-case scenario, and \$1,050 in a best-case scenario. Organic producers would be responsible for this in addition to the roughly \$1000+ fees associated with organic certification, meaning upwards of \$2,000 in regulatory application fees on top of existing production and labor costs. This is very impactful to small and mid-scale farm businesses, and far exceeds the regulatory fees of neighboring states.

OEFFA Recommendations:

OEFFA proposes that the residence rule be lifted, given that hemp is now a legal plant, and that the minimum hemp cultivation be reduced to 60 row feet without prior department approval, and any number of plants, with written approval by the Ohio Department of Agriculture. This would enable a producer to try hemp with 10 plants on 6-foot centers, to assess whether this form of production is

viable and would make this production accessible to a small farmer on a quarter acre, which seems to have been the initial intent of the rule.

OEFFA suggests the hemp fees be made more reasonable and similar to those of neighboring states to improve access to this important, emerging market for small, mid-scale, and organic producers.

Respectfully submitted on behalf of the Ohio Ecological Food and Farm Association.

Amalie Lipstreu
Policy Director

Committee members,

Thank you for the opportunity to provide comment on the draft hemp rules for cultivation. I would also like to recognize and thank the Ohio Department of Agriculture's hemp team. Their hard work and dedication to bringing this crop into farmer's fields is apparent. I am a 4th generation transitioning organic farmer. The newly legalized status of hemp represents an exciting opportunity for small farmers across the state. Organic farmers are especially well positioned to grow high quality crops such as hemp for CBD oil. Organic farmers represent nearly 4000 small farmers in Ohio. I can assure you that many are excited about the opportunity hemp grown for CBD offers. It is with this opportunity in mind that I respectfully offer the following comments.

Land use restrictions in section 901:14-1-06

Subsection (F) states that a licensed cultivator shall not Plant or grow hemp in an outdoor growing location of less than one-quarter acre unless prior approval is received in writing from the department.

Subsection (G) states that a licensed cultivator shall not plant or grow hemp in an indoor growing location of less than one thousand square feet unless prior written approval is received in writing from the department.

Subsection (H) states that a licensed cultivator shall not plant or grow hemp in a growing location in a quantity of less than one thousand plants unless prior approval is received in writing from the department.

Calculations and Discussion:

The arithmetic on which these requirements is based, conflicts with the growing practices of some potential producers. It is important to ensure that producers of all scales will have the same access to this emerging market and that the department is not disadvantaging small scale producers.

For example, the production realities of CBD hemp are different than those of hemp for fiber. Fiber hemp producers should not have a difficult time meeting these requirements. That said, CBD hemp production is akin to tomato production. It is a labor intensive, horticultural crop that can be grown and marketed on a variety of scales, and as part of a variety of crop rotations and cropping systems. The following examples demonstrate the need for reconsideration of this section of the rules.

CBD hemp production occurs on four to six-foot centers, and, much like tomato production, increased space between plants can lead to improved air flow and reduced disease pressure, so more space between plants may be advisable, depending on each farm's situation. CBD hemp plants also grow quite large and leaf-out when thriving, further demonstrating the need for greater plant spacing. Even at 4-foot spacing, however, the department's requirement for 1000 plants in a quarter acre would not work on the ground. One acre is 43,000 square feet. A quarter acre is 10,890 square feet, which works out to about 104.5 x 104.5 feet. 104.5 divided by 4' yields about 670 plants in a quarter acre, which may not be advisable if air flow is compromised between plants. Six-foot centers would yield about 280 plants on a quarter acre, which would be preferable in terms of disease management. In short, the figures in the proposed draft rule are not workable.

Further, organic producers are required to implement a soil-building crop rotation. To do so, and remain a hemp producer, the producer would need to have at least double, but preferably triple or quadruple the amount of land in CBD hemp production to rotate into other plant families, cover crops, and cash crops over time, while remaining in hemp production, and thus continuing to build expertise and relationships with hemp processors. If a quarter acre is the minimum the department is willing to go with regard to hemp production, then an acre would be the minimum practical growing space available to an organic CBD hemp producer to follow both the organic standards and the Ohio hemp rules. This could be further impacted by the distance from a residence, which could further preclude a producer from utilizing land near his or her residence for hemp production, requiring even more land in order to do this production justice.

The calculations above demonstrate why 1,000 mature plants would never fit in a typical, twenty by 30-foot hoop house or high tunnel which is what we believe the department intended with an "indoor growing location" in subsection G. The department of agriculture has mentioned that they have "consulted states on what works" when developing the 1000 plant rule. I would ask them to define the group that this works for. It would seem as though that number of plants only favors very large producers. Perhaps this number works for a hemp for biomass farmer which is very large scale and not harvested by hand or grown on an individual plant by plant basis. Biomass relies on quantity vs quality. So many acres must be planted to produce what a small organic farmer can grow with a few hundred plants in terms of CBD oil % and quality.

I propose that the residence rule be lifted, given that hemp is now a legal and a non-criminal, highly useful plant. I would also ask that the minimum number of plants be adjusted to allow all small and serious farmers to benefit from this crop. I would suggest a 3-400 plant minimum. (Pennsylvania adopted a 300-plant minimum rule for 2020 AFTER their successful pilot program.) West Virginia does not have a minimum. And it is my belief that no other state to date has a minimum other than Kentucky. 3-400 plants would still show legitimacy and intent of a farmer while keeping a "backyard" grow off limits. The department said in their response to public comment on this topic that they looked to states on what works. What states? I do not know of another state (Kentucky excluded) with such a demanding minimum. To my knowledge Kentucky was the blueprint for much of Ohio's language. It is also my understanding that Kentucky is the only state that has a 1000 plant minimum. This minimum originated to facilitate a pilot program that was never intended for a working small farmer but rather for research and university study. The 1000 plants were decided on in an attempt to standardize research and for comparison of fertilization, and disease response. A large number was needed in order to show plant behavior. The department also made comments that

the 1000 plant minimum would allow local law enforcement to differentiate hemp from illegal marijuana. With the licensing process mandating GPS location coordinates, and the department creating a database for law enforcement to reference, in addition to the department and growers notifying local authorities it appears the 1000 plant minimum is not necessary and disadvantageous to small farmers. It is an attempt to commercialize an industry but ignores the fact that it leaves the small farmer behind. I would surely think that if PA is implementing a 300 plant minimum for 2020 after a successful pilot program then law enforcement was considered in this decision.

I would ask that the Department of agriculture provide data and statistics showing why this works for the small farmer and not just a large farm or conglomerate. I would also ask that the department provide the states and their plant minimums in which they consulted with. This information was not part of the department's response and should be closely considered by the committee. I would ask that the committee members reject the 1000 plant minimum rule 901:14-1-06 (H) and recommend a more reasonable compromise of 3-400 plants that would align with small farmers abilities, resources and still address department concerns.

It appears as though the department has created a way to ignore small farmers with the demanding 1000 plant minimum by stating "unless prior written approval is received by the department" I would ask that criteria be provided on which a variance to these rules will be granted. I find it unlikely that the department will be issuing many variances and there would likely be hundreds of small farmers wanting such a variance. If a variance is to be had then farmers ought to be able to know what he or she must meet in order to receive such a variance. Ideally a compromise on a 3-400 plant minimum that more closely aligns with small farmers resources and neighbor states would be the best option for both parties.

The horticultural and health benefits of hemp ought not be limited to the landed elite. This would enable a producer to try hemp with fewer plants on 6-foot centers, to see whether this form of production is even viable on his or her farm and would make this production accessible to a small farmer on a quarter acre, which seems to have been the initial intent of the rule.

I suggest the committee consider small farmers before approving the proposed draft hemp rules. In its current form it only favors very large commercial farm operations. I would also ask that the department keep with those neighboring states to improve access to this important, emerging market for small, mid-scale, and organic producers.

Kind regards,

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