



GEORGIA DEPARTMENT OF AGRICULTURE

Gary W. Black, Commissioner

www.agr.georgia.gov

DATE: January 7, 2020

ACTION: Notice of Intent to Consider the Adoption of Hemp Growers and Processors Rules

TO ALL INTERESTED PERSONS AND PARTIES:

Pursuant to the Official Code of Georgia Annotated, O.C.G.A. §§ 2-23-12 and 50-13-4, notice is hereby given that the Georgia Department of Agriculture will be accepting written comments regarding the adoption of Hemp Growers and Processors Rules from January 7, 2020, to the close of business (4:30 p.m. EST) on February 6, 2020.

SYNOPSIS, MAIN FEATURES AND DIFFERENCES:

In July 2019, the Georgia Department of Agriculture solicited comments regarding proposed Hemp Growers and Processors Rules; however, the proposed Rules were not adopted by the Department. Following the United States Department of Agriculture's promulgation of its Interim Final Rule governing the production of hemp under the 2018 Farm Bill on October 31, 2019, the Department began drafting new proposed Hemp Growers and Processors Rules, which incorporate requirements from the federal Rule.

Accordingly, the Department is proposing to adopt new Chapter 40-32 entitled "Hemp Growers and Processors".

Proposed Subject 40-32-1 sets forth the "General Provisions" applicable to the Rules.

Proposed Rule 40-32-1-.01 entitled "Authority and Purpose of Rules" provides that pursuant to the authority vested in the Georgia Department of Agriculture under the Georgia Hemp Farming Act, O.C.G.A. § 2-23-1 et. seq., the purpose of the Rules is to establish the standards, practices, procedures, and requirements for growing and processing hemp in Georgia.

Proposed Rule 40-32-1-.02 entitled "Definitions" defines terminology necessary for administration of the Rules.

Proposed Rule 40-32-1-.03 entitled "Compliance with Federal Law" provides that nothing in the Rules shall be construed as authorizing any person to violate any Federal law or regulation.

Proposed Rule 40-32-1-.04 entitled "Georgia Hemp Plan – Incorporation by Reference" provides that upon approval of the Georgia Hemp Plan by the U.S. Secretary of Agriculture, the plan will be deemed incorporated into the Rules by reference and will be posted on the Department's website.

Proposed Rule 40-32-1-.05 entitled "Consultation with the Georgia Bureau of Investigation" states that the Rules have been developed in consultation with the Georgia Bureau of Investigation.

Proposed Rule 40-32-1-.06 entitled “Severability” provides that if any provision of the Rules is held invalid for any reason, the invalidity will not affect other provisions which can be given effect without the invalid provisions or application.

Proposed Subject 40-32-2 sets forth the Rules governing “Hemp Growers”.

Proposed Rule 40-32-2-.01 entitled “Application for Hemp Grower License” sets forth the requirements for Hemp Grower License Applications, sets forth the timing for submission of applications, sets forth the timing for issuance of Licenses, and provides for renewal of Licenses.

Proposed Rule 40-32-2-.02 entitled “Grower License Terms and Conditions” provides that each applicant and Licensee must acknowledge and agree to the terms and conditions governing the Hemp Grower License and describes said terms and conditions.

Proposed Rule 40-32-2-.03 entitled “Grower Sampling Requirements” requires Licensees to have a Department-approved sampling agent collect samples for delta-9 THC concentration level testing within 15 days prior to that anticipated harvest of any cannabis plants. All sampling must be conducted in accordance with the USDA’s most current *Sampling Guidelines for Hemp Growing Facilities*. The Rule also requires the Licensee or an authorized representative to be present for the sampling; provides that the Licensee will be responsible for paying any and all sampling fees; requires Department-approved sampling agents be given complete and unrestricted access during business hours to all hemp and all land, buildings, and other structures used for cultivation, handling, or storage of hemp and other cannabis plants; prohibits the Licensee from harvesting the cannabis crop prior to samples being taken; and prohibits the Licensee from distributing any lot of cannabis prior to receiving analytical testing results verifying that the lot does not exceed the acceptable hemp THC level.

Proposed Rule 40-32-2-.04 entitled “Laboratory Testing Requirements” provides that analytical testing for purposes of detecting the concentration levels of delta-9 THC must meet certain standards and be conducted by a DEA-registered laboratory and in accordance with the USDA’s most current *Testing Guidelines for Identifying Delta-9 Tetrahydrocannabinol (THC) Concentration in Hemp*. The Rule requires total delta-9 THC be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories must use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. The Rules further requires the Licensee to ensure the DEA-registered laboratory conducting the analytical testing of the sample(s) from the Licensee’s lots submits results for all samples tested to the Department via e-mail to hemp@agr.georgia.gov. The Licensee will be responsible for paying all testing fees.

Proposed Rule 40-32-2-.05 entitled “Grower Responsibilities and Restrictions” provides that a Licensee must harvest the crop not more than fifteen (15) days following the date of sample collection; provides that harvested lots of hemp plants must not be commingled; provides that only lots that meet the acceptable hemp THC level may enter the stream of commerce; provides that any lot exceeding the acceptable hemp THC level must not be further handled, processed, or enter the stream of commerce, and must be disposed of in accordance with the Rules; and provides that any Licensee may request additional testing if it is believed that the delta-9 THC concentration level test results were in error. The Rule further provides that Licensees must not engage in specified activities, requires Licensees to post signage at the entrance of each Grow Site that is one (1) acre or less in size, and requires Licensees to comply with all applicable local, state, and federal laws, rules, regulations, and ordinance at all times.

Proposed Rule 40-32-2-.06 entitled “Disposal of Non-Compliant Cannabis” states that cannabis exceeding the acceptable hemp THC level constitutes marijuana and must be disposed of in accordance with the federal Controlled Substances Act and DEA regulations found at 21 CFR 1317.15 by a reverse distributor. The Rule also sets out disposal notification, procedural, and reporting requirements.

Proposed Rule 40-32-2-.07 entitled “Transportation Requirements” provides that all hemp being shipped, transported, or otherwise delivered into, within, or through the State of Georgia must be accompanied by documentation sufficient to prove that the hemp being shipped, transported, or delivered was lawfully produced under a State or Tribal hemp plan approved by the USDA, under a hemp license issued by USDA, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable, and that the hemp being shipped, transported, or delivered does not exceed the acceptable hemp THC level. Any person shipping, transporting, or delivering hemp must also carry a bill of lading that includes certain information.

Proposed Rule 40-32-2-.08 entitled “Storage of Hemp” provides that only Licensees and Permittees are authorized to store hemp and identifies the requirements for storing hemp. All hemp storage areas will be subject to inspection by the Department.

Proposed Rule 40-32-2-.09 entitled “Pesticide Use” provides that any Licensee who uses a pesticide on hemp must comply with all Georgia laws and regulations pertaining to applications of pesticides including, but not limited to, licensing requirements. Licensees must not apply pesticides to hemp in violation of the product label, and hemp seeds, plants, and materials bearing pesticide residue in violation of the pesticide label may be subject to forfeiture or destruction without compensation.

Proposed Rule 40-32-2-.10 entitled “Recordkeeping and Reporting Requirements” requires Licensees to maintain records relating to all aspects of hemp production and handling. Records must be kept for at least three (3) years and in a manner such that they can be readily provided to the Department upon request. Licensees must also submit an Annual Report to the Department and must report required information to the federal Farm Service Agency. The Department will collect, maintain, and report certain documents and information to the USDA as required by the USDA.

Proposed Rule 40-32-2-.11 entitled “Hemp Program Compliance Inspections” provides that Licensees may be subject to annual compliance inspections during which the Licensee’s operational procedures, documentation, recordkeeping, and other practices may be verified. Compliance inspections may be unannounced and conducted at any time during regular business hours.

Proposed Rule 40-32-2-.12 entitled “Violations and Enforcement” includes a non-exhaustive list of violations and provides that violations will be subject to enforcement in accordance with O.C.G.A. § 2-23-10, the Georgia Hemp Farming Act, the Rules, and other applicable state law. Violations of the Georgia Hemp Farming Act or the Rules may constitute a public nuisance under Georgia law, and civil enforcement may result.

Proposed Subject 40-32-2 sets forth the Rules governing “Hemp Processors”.

Proposed Rule 40-32-3-.01 entitled “Application for Hemp Processor Permit” sets forth the requirements for Hemp Processor Permit Applications, sets forth the timing for submission of applications, sets forth the timing for issuance of Permits, and provides for renewal of permits.

Proposed Rule 40-32-3-.02 entitled “Processor Permit Terms and Conditions” provides that each applicant and Permittee must acknowledge and agree to the terms and conditions governing the Hemp Processor Permit and describes said terms and conditions.

Proposed Rule 40-32-3-.03 entitled “Processor Sampling” provides that hemp products are subject to sampling by a Department-approved sampling agent for delta-9 tetrahydrocannabinol concentration level testing. Sampling will be conducted in accordance with the Department’s most current *Sampling and Testing Guidelines for Hemp Processing Facilities*. The Permittee or an authorized representative must be present at the facility for sampling, and the Permittee will be responsible for paying all sampling fees. A Permittee must not transfer, transport, or otherwise distribute hemp products from a sampled product lot prior to receiving analytical testing results verifying that the product lot sampled does not exceed the acceptable hemp THC level.

Proposed Rule 40-32-3-.04 entitled “Processor Laboratory Testing” provides that analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) must meet certain standards and be conducted and reported by a laboratory registered with DEA to handle controlled substances under the Controlled Substances Act (CSA), 21 CFR part 1301.13. Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories must use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. Each Processor must ensure that the DEA-registered laboratory conducting the analytical testing of the sample(s) submits results for all tested samples to the Department.

Proposed Rule 40-32-3-.05 entitled “Permittee Restrictions” provides that provides that a Permittee must not engage in specified activities. The Permittee must also comply with all applicable local, state, and federal laws, rules, regulations, and ordinances at all times including, but not limited to, the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all laws, rules, regulations, and ordinances relating to product development, product manufacturing, consumer safety, and public health.

Proposed Rule 40-32-3-.06 entitled “Disposal of Non-Compliant Cannabis Products” states that cannabis products exceeding the acceptable hemp THC level constitute marijuana and must be disposed of in accordance with the federal Controlled Substances Act and DEA regulations found at 21 CFR 1317.15 by a reverse distributor. The Rule also sets out disposal notification, procedural, and reporting requirements.

Proposed Rule 40-32-3-.07 entitled “Transportation Requirements” provides that all hemp products being shipped into or transported within or through the State of Georgia must be accompanied by documentation sufficient to prove that the hemp products being shipped or transported were produced from hemp that was lawfully produced under a State or Tribal hemp plan approved by the USDA, under a hemp license issued by USDA, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable. Any person transporting hemp products must also carry a bill of lading that includes the certain information.

Proposed Rule 40-32-3-.08 entitled “Storage of Hemp” provides that only Licensees and Permittees are authorized to store hemp and identifies the requirements for storing hemp. All hemp storage areas will be subject to inspection by the Department.

Proposed Rule 40-32-3-.09 entitled “Recordkeeping Requirements” requires Permittees to keep and maintain certain documents and information relating to all aspects of hemp processing and handling. Permittees must keep and maintain copies of all records, documents, and information required by this Rule for at least three (3) years and in a manner such that they can be readily provided to the Department upon request.

Proposed Rule 40-32-3-.10 entitled “Hemp Processor Compliance Inspections” provides that Permittees may be subject to compliance inspections during which Permittee’s operational procedures, documentation, recordkeeping, and other practices may be verified. Compliance inspections may be unannounced and conducted at any time during regular business hours.

Proposed Rule 40-32-3-.11 entitled “Violations and Enforcement” includes a non-exhaustive list of violations and provides that violations will be subject to enforcement in accordance with the Georgia Hemp Farming Act, the Rules, and other applicable state law.

COMMENT PERIOD AND ADDITIONAL INFORMATION:

The Department will be accepting written comments from January 7, 2020 to the close of business (4:30 p.m. EST) on February 6, 2020. Comments will be considered on February 7, 2020. Please submit written comments to:

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Georgia Department of Agriculture
1109 Experiment Street
Redding Building, Room 213
Griffin, Georgia 30223
Telephone Number: 404-651-9486
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E-mail: Mike.Evans@agr.georgia.gov

Interested persons may call or submit a written request to obtain a copy of the proposed Rules. A copy of the synopsis and the proposed Rules may be downloaded from the Georgia Department of Agriculture website at www.agr.georgia.gov.

This notice is given in compliance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-4.