



Proposed Georgia Regulations (as of January 7, 2019): Not Finalized by Georgia and Currently Under Review by USDA

The Hemp Regulatory Environment: A Brief History and Outline of Current U.S. and Georgia Regulations

Adam Rabinowitz¹, Julie Campbell,² and Ben Campbell¹,

¹ Department of Agricultural and Applied Economics, University of Georgia

² Department of Horticulture, University of Georgia

The United States (U.S.) hemp industry has a long history that dates back to the seventeenth century (Fortenbery and Bennett, 2004). Production was booming and the use of hemp was widespread, most notably for fiber. Strong demand existed for bagging, bale, paper, rope, sailcloth, and clothing such that production expanded rapidly in the mid-1800s. It was not until the 1890s with the advent of machinery for harvesting cotton, the cotton gin, and steam and petroleum powered ships when hemp production started to decline. At this point, however, hemp was still legal to produce in the U.S.

During the early 1900s, hemp continued to be grown, was part of Extension programming, and was included in U.S. Department of Agriculture statistics, publications, and assistance programs. However, hemp is derived from the plant species, *Cannabis sativa* L., which is the same species that produces marijuana. Due to the psychotropic effects of marijuana, concerns over the production of hemp became paramount and 33 states passed laws between 1914 and 1933 that restricted legal production of the *Cannabis* flower and leaves (Johnson 2018). It was not until the 1937 Marihuana (Marijuana) Tax Act that regulation of hemp became a federal issue. With the passage of this law, all varieties of the cannabis plant were classified as a narcotic drug. This required federal registration for growers to continue to produce hemp, however production was still encouraged during World War II (Malone and Gomez, 2019). Throughout the early 1900s, hemp production had been on the decline and after the war, virtually no further production occurred after the late 1950s. Ultimately, the Controlled Substances Act of 1970 took the 1937 Marijuana Tax Act definition and continued the controls on production that required federal

permits. The Drug Enforcement Administration (DEA) also rejected almost all applications for decades.

2014 Farm Bill

The Agricultural Act of 2014 (2014 farm bill) began a new era for hemp production as the federal government eased some of the hemp producing regulations by allowing a pilot program for hemp production by institutions of higher education and state departments of agriculture. The farm bill introduced a new definition for hemp that allows the *Cannabis sativa* L. plant to be classified as industrial hemp if the delta-9 tetrahydrocannabinol (THC) concentration is not more than 0.3 percent on a dry weight basis. In response, some states passed or introduced their own legislation allowing university research and licensed production. However, hemp was still a Schedule I controlled substance and thus illegal under federal law. Congressional appropriations during the years after the 2014 farm bill ultimately prohibited the Drug Enforcement Administration (DEA) from interfering with state agencies, hemp growers, and agricultural research. Thus only state laws and interstate transit prohibited hemp production or processing. This led to the development of increased hemp production and new market opportunities, including the rapid growth of Cannabidiol (CBD oil) (Cherney and Small, 2016).

2018 Farm Bill

On December 20, 2018, President Trump signed into law the Agriculture Improvement Act of 2018 (2018 farm bill). This law relaxed the most significant obstacle to increased hemp production by declassifying hemp as a Schedule I controlled substance. Thus industrial hemp, as defined by THC being no more than 0.3 percent on a dry weight basis became legal to produce and transport across state lines. The term hemp is formally defined as:

The plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or now, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis (Agriculture Improvement Act of 2018, Title X, Sec 10113, Subtitle G, Sec. 297A).

Additionally, states must submit a plan to monitor and regulate production to the USDA Secretary of Agriculture through their State department of agriculture.

An interim final rule (effective October 31, 2019) has been submitted for comment by the USDA. Details can be found at <https://www.ams.usda.gov/rules-regulations/hemp> and comments may be submitted to the USDA until January 29, 2020.

Furthermore, hemp became eligible for crop insurance under Title XI, authorizing the Risk Management Agency (RMA) to develop such a policy. RMA has indicated that a Whole Farm Revenue Protection (WFRP) program is available for certain industrial hemp growers for the crop year 2020. Additionally, Multi-Peril Crop Insurance (MPCI) coverage is available in 21 states throughout the U.S., although not in Georgia for 2020.

Georgia State Regulations

While some states passed laws allowing the production of hemp after the 2014 farm bill, Georgia was not one of them. It was not until after the 2018 farm bill passed that the state legislature was successful in passing such legislation (HB 213). In compliance with state and federal regulations, the Georgia Department of Agriculture (GDA) has released rules for hemp growers and processors (Chapter 40-32). A comment period was established during July and August of 2019, after which time the GDA reviewed comments. With the release of the USDA interim final rule, the GDA further revised the Georgia hemp rules. On January 7, 2020, a revised Georgia hemp rule was submitted to the USDA Secretary of Agriculture for approval. (See <http://www.agr.georgia.gov/industrial-hemp-production.aspx> for the complete rules.) A comment period is open until February 6, 2020 and the rules are also under review by the USDA. Thus no hemp production or processing may take place in the state of Georgia until those rules are finalized and accepted by the USDA. Furthermore, the USDA has advised GDA that a legislative appropriation is necessary for the administration of the hemp program before approval can be provided. Below is a summary of selected key rules included in the current GDA provisions, however, potential growers are advised to read the full state legislation and rules for complete information.

- No cultivation, handling, storage, or processing may occur without the appropriate grower license or processor permit issued by the Georgia Department of Agriculture (GDA).
- An annual Hemp Grower License fee is \$50 per acre up to a maximum of \$5,000 per application.
- An initial Hemp Processor Permit fee is \$25,000 with a surety bond of \$100,000 for each application. Renewals are at a fee of \$10,000 per year.
- Hemp Grower Licenses and Hemp Processor Permits will be issued on January 1 (except in 2020) and will expire on December 31 of each year.
- GPS identification must occur of all fields, greenhouse, storage, and processing facilities used in the production, storage, or processing of hemp.
- Any cannabis plant that is expected to be harvested within 15 days must have a sample tested by a GDA approved sampling agent in accordance with the USDA's *Sampling Guidelines for Hemp Growing Facilities*.
- In the event that THC levels are more than the acceptable hemp THC levels, then the crop must be destroyed. Acceptable levels are based on a dry weight concentration level with a measurement of uncertainty that includes 0.3% or less. A grower may request additional testing if they believe the test results were in error.
- The sampling fee and any disposal costs and fees as a result of cannabis exceeding acceptable hemp THC levels will be paid by the owner of the Hemp Grower License.
- No unsupervised public access is allowed on any hemp grow site, storage, or processing facility.

- All harvested lots of hemp must be separated in a manner that maintains a unique identity of each harvest lot, i.e. no commingling of the crop is permitted.
- Storage and processing facilities must be secured with physical containment and reasonable security measures.
- Areas that are licensed for the growth of hemp must include signage that identifies the area as a “Georgia Department of Agriculture Licensed Hemp Grower” with the name of the licensee, license number, and GDA phone number.
- Any fields where hemp is planted must be scouted and monitored for volunteer cannabis plants for three years past the last date of last planting reported to GDA.
- Specific recordkeeping is defined by the rules to allow for identification and traceability. Furthermore, annual reporting to GDA and FSA is required.
- GDA will perform pesticide residue tests to ensure only authorized pesticides are used in hemp production.
- All hemp being transported in Georgia must be accompanied by documentation indicating the hemp was lawfully produced, that it does not exceed acceptable hemp THC levels, and has an appropriate bill of lading with identification of the owner of the hemp, point of origin and delivery, kind and quantity of hemp, and date of shipment.
- Processors may only obtain hemp lawfully produced under an approved USDA hemp plan.
- Any grower, handler, or processor of hemp must comply with all local, state, and federal rules, regulations, and ordinances.

This publication will be updated once final rules are approved by GDA. In the meantime, producers that are interested in growing or processing hemp should become familiar with the details of these regulations as well as the economic and agronomic aspects of production. Furthermore, markets have been rapidly developing and are expanding in other states where production has been in full swing. Thus, consideration should be given to the future of hemp product marketing and the ability to enter an already burgeoning industry.

References

Cherney, Jerome H. and Small, Ernest, 2016. Industrial Hemp in North America: Production, Politics and Potential. *Agronomy*, Vol. 6, No. 58.

Fortenbery, T. Randy and Bennett, Michael T., 2004. Opportunities for Commercial Hemp Production. *Review of Agricultural Economics*, Vol. 26, No. 1, pp. 97-117, February 2004.

Johnson, Renée, 2018. Hemp as an Agricultural Commodity. Congressional Research Service, RL32725, June 22.

Malone, Trey and Gomez, Kevin, 2019. Hemp in the United States: A Case Study of Regulatory Path Dependence, *Applied Economic Perspective and Policy*, Vol. 41, No. 2, pp. 199