



September 6, 2024

Bruce Stanford, Deputy Director
Law Enforcement Division
Georgia Department of Agriculture
19 M.L.K. Jr. Drive SW
Atlanta, GA 30334
E-mail: hemp@agr.georgia.gov

Re: Written Comments – Notice of Intent to Amend, Repeal, and Adopt Hemp and Hemp Product Rules & Notice of Intent to Adopt Consumable Hemp Product Rule

Deputy Director Stanford:

The U.S. Hemp Roundtable sincerely appreciates the efforts undertaken by the Georgia Department of Agriculture (“Department”) in developing proposed rules to implement the legislative changes made by Ga. L. 2024, SB 494 (“Proposed Rules”), which became law earlier this year. Most of the Proposed Rules appear to be minor or clarifying in nature and align with state-level trends in fairly and reasonably regulating consumable hemp products. However, as explained below, we have serious concerns about certain Proposed Rules that are substantive, some of which exceed what SB 494 mandates.

I. Rule 40-32-5-.01 – Standards for Consumable Hemp Products

Prohibited Forms of Consumable Hemp Products

The Proposed Rules prohibit “[a]ny hemp product containing a non-cannabinoid additive that would increase potency, toxicity, or addictive potential, or that would create an unsafe combination with other psychoactive substances including, but not limited to, nicotine.” We recommend that “non-cannabinoid” be replaced with “non-cannabis.” This change would protect full-spectrum products and similar products that contain non-cannabinoid parts of the hemp plant, such as terpenes and other essential oils. The change would not impede the Proposed Rules’ goal of prohibiting non-cannabis additives that increase potency, toxicity, or addictiveness or create an unsafe combination, as these additives would remain prohibited.

II. **Rule 40-32-5-.03 – Required Labeling**

General Provisions

The Proposed Rules rightly prohibit a consumable hemp product’s label from containing an untrue or misleading health-related statement, and appropriately require scientific support for a health-related statement. Though laudable, the scientific support requirement is ambiguous because it does not clarify what “scientific evidence and significant scientific agreement among experts” entails. We recommend that the Proposed Rules clarify that a verified scientific study is adequate support for a health-related statement.

Contents Labeling

The Proposed Rules require consumable hemp products in the form of gummies, beverages, or tinctures to be labeled with their total delta-9 tetrahydrocannabinol (“THC”) content in milligrams per serving and per package and per package for products that are beverages. The Proposed Rules do not permit a variance between the listed content amount and the content amount that is actually present in the product or allow a label to include a disclaimer that there may be a variance.

We recommend that a 20% variance be allowed, which will enable manufacturers to account for a margin of error. For example, the U.S. Food and Drug Administration’s “80/120” rule states that foods cannot contain more than 120% of the declared nutrient value or less than 80% of the actual value, thereby allowing a 20% plus-or-minus variance. Multiple states, including New York, have adopted the same, or a similar, rule for a variance allowance.

Full Panel Certificate of Analysis

SB 494 requires a consumable hemp product to be labeled with its full panel certificate of analysis results or with a QR code that provides direct access to the results, specifically requiring testing of seven analytes. The Proposed Rules go further by requiring that five additional analytes be tested and included in the full panel results. Most accredited laboratories do not test for some or all the additional analytes, making compliance difficult. Even if an accredited laboratory can test for the additional analytes, such testing is costly and is likely to cause testing bottlenecks and delays.

We recommend limiting the testing requirement to the seven analytes required by SB 494. However, if the Department continues to require testing for the five additional analytes, we urge that such testing be required only for a product that is marketed as containing one or more of those analytes.

Warning Sticker of the Universal Symbol

The Proposed Rules require a consumable hemp product “to bear a sticker, or equivalent re-production” that “replicate[s]” the Department’s universal symbol. The universal symbol includes Georgia’s “GA” abbreviation. While the ability to replicate the universal symbol provides some flexibility, it is unclear whether

a sticker without the “GA” abbreviation, but that otherwise warns consumers that the product contains THC, would comply.

We ask that the Department allow a sticker without the “GA” abbreviation as long as it adequately warns about THC. First, SB 494 does not require the universal symbol to include the “GA” abbreviation. Second, requiring the “GA” abbreviation is inconsistent with other states’ labeling requirements and ignores that manufacturers’ products are distributed throughout interstate commerce, not just in Georgia. Third, manufacturers will be forced to redesign and print new labels, which will unnecessarily increase compliance costs that manufacturers may be required to pass to consumers.

If the Department deems the “GA” abbreviation necessary, we ask that the Proposed Rules’ effective date be delayed. Rhode Island and Tennessee delayed the effective dates of their labeling rules by several months. A meaningful delay will ensure that manufacturers can sell through their current inventories without violating the warning symbol sticker requirement. As the Department probably knows, most manufacturers plan their label productions months in advance, meaning that adequate time will be needed to adjust and comply.

III. Rule 40-32-5-.04 – Packaging of Consumable Hemp Products

Packaging Minimum Requirements

We have three concerns about the Proposed Rules’ packaging minimum requirements. First, while we appreciate the Proposed Rules’ goal of protecting consumers and keeping potentially harmful products out of the hands of children, the minimum packaging requirements are overinclusive. The requirements for tamper-evident and child-resistant packaging apply to *all* consumable hemp products, even those that do not contain THC or that are not intoxicating. Consumable hemp products without THC do not pose the same risks as THC products and should therefore not be subject to the same restrictions.

We recommend that the tamper-evident and child-resistant packaging requirements include an exception for products without THC. A similar exception is utilized in Subject 40-32-5-.03(3), which non-THC products from the warning symbol sticker requirement.

Second, the child-resistant packaging requirement should not apply to consumable hemp products in the form of beverages. Most beverages are sold in standard aluminum cans with pull-tab tops that are inherently child resistant. If the Department maintains the child-resistant packaging requirement for beverages, we recommend adding language that a can with a pull-tab top shall be deemed child-resistant packaging.

Third, the Proposed Rules do not appear to set a container size for consumable hemp products in the form of beverages. Many manufacturers sell beverages in 8-ounce or less cans, but it is not clear whether these products are legal under the Proposed Rules. We request clarification about whether there is a minimum serving size or container size for beverages, or whether there is a limit on number of servings per beverage.

IV. Consumable Hemp Product Rule

Finally, we have heard rumors that the Department has rescinded, or will soon rescind, the Proposed Rule adopting limits on total delta-9 THC content in consumable hemp products. However, it appears from the Department's website, to which the notice of the Consumable Hemp Product Rule is posted, that the delta-9 THC milligram limits are still in play. Withdrawing the Consumable Hemp Product Rule would be the legally correct decision because the Department lacks statutory authority to implement it. SB 494 does not include per serving or per package limits or direct the Department to impose any such limits. In fact, our understanding is that the legislature specifically intended to **not enact** THC milligram limits in SB 494.

Beyond the Department exceeding its statutory authority, we have concerns about the specific limits as proposed. First, while a 10 milligrams of delta-9 THC limit per serving is reasonable for gummies, most gummies are sold in 30-day supplies. The Department's proposed per-package limit would limit supplies to 15 days, which is half the industry standard. We therefore recommend a per-package limit of at least 300 milligrams of delta-9 THC for gummies.

Second, we are confused as to why gummies and beverages are being treated differently. For example, most states that allow hemp-derived THC beverages permit up to 5 milligrams of delta-9 THC per serving and up to 2 servings per container—for a total of 10 milligrams of delta-9 THC per container. We recommend a per-container limit of 10 milligrams of delta-9 THC for beverages, which would align with what most states allow for these products. Further, as discussed above, limiting a single serving to 12 fluid ounces means that beverages in 8-ounce or less single-serving containers will be illegal. This will unnecessarily eliminate many popular beverage products from the market.

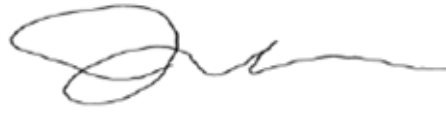
Third, the predominant serving size for tinctures is 1 milliliter, not 1 ounce. Relatedly, the average serving contains 1 to 2.5 milligrams of delta-9 THC. The Department's proposed limits of 2 fluid ounces per serving and 10 fluid ounces per container effectively means that a tincture may contain only 5 servings. This limit, along with the proposed cap of 1 milligram of delta-9 THC per serving, is too restrictive.

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The Roundtable is grateful to the Department for its focus on the important topic of appropriately regulating consumable hemp products. We are available to collaborate with the Department so that the issues discussed above are resolved for the benefit of the hemp products industry in Georgia and across the country. To that end, we respectfully urge you to include our suggested recommendations.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Miller', with a long horizontal flourish extending to the right.

Jonathan Miller
General Counsel
U.S. Hemp Roundtable