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## Florida Department of Agriculture Releases New Hemp/CBD Regulatory Rules for 2020

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The Florida Department of Agriculture and Consumer Services ("FDACS") started the new year by enacting new administrative rules regarding Hemp<sup>1</sup> and Cannabidiol ("CBD") under the Division of Food Safety and the Division of Agricultural Environmental Services. The new Hemp/CBD rules, referred to by the FDACS on its website as the Food Safety Rule and the Feed Rule, come as the FDACS anticipated Cultivation Rule remains delayed while the department works to align the Florida Cultivation Rule with the USDA's final interim rules released October 31, 2019. Statements from the FDACS indicate that the department expects to finalize the Cultivation Rule in the first quarter of 2020, which will finally allow the legal planting of the hemp plant in Florida.

Under the Food Safety Rule, any person/entity which manufactures, processes, packages, holds, prepares, or sells food at wholesale or retail consisting of or containing Hemp Extract, as defined therein, is known as a Hemp Food Establishment and is required to obtain a food permit as set forth in Rule 5K-4.020, F.A.C.<sup>2</sup> Likewise, persons and places involved in manufacturing, processing, and handling milk, milk products, and frozen desserts containing Hemp or Hemp Abstract are subject to similar permit requirements under Rule 5K-10.002, F.A.C.<sup>3</sup> The Feed Rule incorporates Hemp and Hemp Extract related requirements into the existing Rule 5E-3.003, F.A.C. regarding the inspection, sampling, and analysis of animal feed. Under the new rule, pet food, specialty pet food, pet treats, and specialty pet treats containing Hemp Extract must be tested and have a certificate of analysis prepared by an independent testing laboratory as required under Section 581.217(7), F.S., and be labeled with a declaration of the number of milligrams of Hemp Extract in the product.

Importantly, even with the enactment of the Food Safety Rule, the contents of CBD products sold in Florida continue to be unregulated, untested, and without standards. The FDACS continues to warn that it is unable at this time to ensure that any Hemp/CBD products are completely safe for human consumption, and that it has received reports of falsely advertised products in Florida containing harmful additives and little or no CBD.

In light of the new measures, members of the Hemp and CBD industry should consult with their lawyers or compliance officers to ensure conformance with applicable laws and regulations.

<sup>1</sup> Hemp is defined under Florida law to mean ". . .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 thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis." § 581.217, Fla. Stat. (2019).

<sup>2</sup> Rule 5K-4.034, F.A.C.

<sup>3</sup> Rule 5K-10.006, F.A.C.

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