



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23218

www.vdacs.virginia.gov

Joseph W. Guthrie
Commissioner

TO: Food manufacturers, distributors, retail food establishments
Industrial hemp registrants

FROM: Virginia Department of Agriculture and Consumer Services

DATE: June 15, 2023

RE: 2023 Hemp Product Legislation

The 2023 Session of the General Assembly passed legislation that amended the Code of Virginia to establish new requirements for certain hemp-derived products. This memo provides an overview of the requirements that become effective in 2023.

Some hemp-derived products are subject to statutory or regulatory requirements that are currently in effect. This memo will also provide an overview of those requirements.

This memo does not address every detail of each requirement. If you have questions regarding a requirement, you should contact the appropriate program listed at the conclusion of this memo.

DEFINITIONS (EFFECTIVE JULY 1, 2023)

“Edible hemp product” means any hemp product that is or includes an industrial hemp extract, as defined in Va. Code § 3.2-5145.1, and that is intended to be consumed orally.

“Hemp product” means a product, including any raw materials from industrial hemp that are used for or added to a food or beverage, that (i) contains industrial hemp and has completed all stages of processing needed for the product and (ii) when offered for retail sale, (a) contains a total tetrahydrocannabinol (THC) concentration of no greater than 0.3 percent and (b) contains either no more than two milligrams of total THC per package or an amount of cannabidiol (CBD) that is no less than 25 times greater than the amount of total THC per package.

“Hemp product intended for smoking” means any hemp product intended to be consumed by inhalation.

“Industrial hemp extract” means an extract of (i) industrial hemp, (ii) that is intended for human consumption, and (iii) except as otherwise provided in Va. Code § 54.1-3442.6(M), when offered for retail sale, that (a) contains a total THC concentration of no greater than 0.3 percent and (b)

contains either no more than two milligrams of total THC per package or an amount of CBD that is no less than 25 times greater than the amount of total THC per package.

“Regulated hemp product” means a hemp product intended for smoking or an edible hemp product.

EXISTING RULES

Anyone processing industrial hemp into a hemp product, regardless of what the product is or how the product is consumed, must have an Industrial Hemp Processor Registration.

Industrial hemp extracts intended for human consumption orally must be manufactured and sold in compliance with the Food and Drink Law and regulations adopted pursuant thereto.

- Must meet the Food and Drink Law’s definition of “industrial hemp extract” (Va. Code § 3.2-5145.1).
- Must be manufactured in a facility inspected by the food regulatory authority.
- Must comply with 2 VAC 5-595, *Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption*. This regulation includes requirements such as:
 - Contaminant testing
 - Batch identification
 - Labeling requirements
- A Food Permit is required to manufacture these products. A Food Permit may be required to sell these products.

The sale of substances intended to be consumed orally or by inhalation that contain THC that are not marijuana, as defined in Virginia’s Criminal Code, must comply with the Virginia Consumer Protection Act.

- May not be sold to a person younger than 21 years of age.
- Must have child-resistant packaging.
- Must have label that states:
 - That the substance contains THC and may not be sold to persons younger than 21 years of age;
 - All ingredients contained in the substance;
 - The amount of such substance that constitutes a single serving; and
 - The total percentage and milligrams of THC included in the substance and the number of milligrams of THC that are contained in each serving.
- Must be accompanied by a certificate of analysis, produced by an independent laboratory that is ISO/IEC 17025 accredited, that states the THC concentration of the substance or the THC concentration of the batch from which the substance originates.
- May not be in the shape of a human, animal, vehicle, or fruit.
- May not be in packaging that bears a trademark or famous mark that the seller is not authorized to use.

NEW FOOD AND DRINK LAW REQUIREMENTS FOR AN INDUSTRIAL HEMP EXTRACT OR FOOD OR DRINK CONTAINING AN INDUSTRIAL HEMP EXTRACT THAT BECOME EFFECTIVE ON JULY 1, 2023

- Industrial hemp extracts and food containing an industrial hemp extract, when offered for retail sale, may not exceed 0.3 percent total THC and may not have more than two milligrams of total THC per package unless the product’s cannabidiol (CBD) to THC ratio is at least 25 parts CBD to one part THC.
 - “Total THC” means all of the THC in a product, including delta-8, delta-9 THC, and any other forms of THC.
- Any person who intends to manufacture, sell, or offer for sale a substance intended to be consumed orally that contains an industrial hemp-derived cannabinoid must submit an Edible Hemp Products Disclosure Form.
- Must be in child-resistant packaging, if it contains THC.
 - “Child-resistant” means, with respect to packaging or a container, (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) for any product intended for more than a single use or that contains multiple servings, resealable.
- Must be equipped with a label that states, in English and in a font no less than 1/16 of an inch:
 - All ingredients contained in the industrial hemp extract or food containing an industrial hemp extract;
 - The amount of such industrial hemp extract or food containing an industrial hemp extract that constitutes a single serving;
 - The number of milligrams of total THC per serving and number of milligrams and percent of total THC per package, if it contains THC;
 - The industrial hemp extract or food containing an industrial hemp extract contains THC and may not be sold to persons younger than 21 years of age, if it contains THC.
- When offered for sale, must be accompanied by a certificate of analysis that:
 - Is produced by an independent laboratory that is ISO/IEC 17025 accredited, and
 - States the total THC concentration of the substance or the total THC concentration of the batch from which the substance originates.
- The certificate of accreditation to standard ISO/IEC 17025 issued by the third-party accrediting body to the independent laboratory shall be available for review at the location at which the industrial hemp extract or food containing an industrial hemp extract is offered for sale or sold.
- Potential penalties for failing to comply with the Food and Drink Law:
 - Denial, revocation, or suspension of your Food Permit
 - Class 1 misdemeanor
 - Civil penalty of up to \$10,000 each day a violation occurs

VIRGINIA CONSUMER PROTECTION ACT (VCPA) REQUIREMENTS FOR SUBSTANCES CONTAINING THC THAT BECOME EFFECTIVE ON JULY 1, 2023

- May not sell a substance intended for human consumption, orally or by inhalation, that contains a synthetic derivative of THC.
- May not sell a topical hemp product that does not include a label stating that the product is not intended for human consumption.
 - Allowed to sell a topical hemp product that was manufactured prior to July 1, 2023, provided that the seller provides documentation of the date of manufacture if requested.
- Potential penalties for failing to comply with the VCPA:
 - Civil penalty of up to \$2,500 per violation
 - Civil penalty of up to \$5,000 for a second or subsequent violation of the THC-related provisions in the VCPA
 - Denial, suspension, or revocation of your Food Permit

INDUSTRIAL HEMP LAW REQUIREMENTS THAT BECOME EFFECTIVE AT A FUTURE DATE*

(*These requirements will become effective when the Commissioner of the Department of Agriculture and Consumer Services (VDACS) provides notice to the Virginia Code Commission that VDACS has established the registration process necessary to implement these requirements.)

- Must have a Regulated Hemp Product Retail Facility Registration in order to sell a hemp product intended for smoking or an edible hemp product.
 - Annual registration fee: \$1,000
 - Registration required for each location that offers for retail sale a hemp product intended for smoking or an edible hemp product.
- Hemp products intended for smoking when offered for retail sale, must be:
 - Contained in child-resistant packaging, as defined in § 4.1-600, if it contains THC.
 - "Child-resistant" means, with respect to packaging or a container, (i) specially designed or constructed to be significantly difficult for a typical child under five years of age to open and not to be significantly difficult for a typical adult to open and reseal and (ii) for any product intended for more than a single use or that contains multiple servings, resealable.
 - Equipped with a label that states, in English and in a font no less than 1/16 of an inch:
 - a. All ingredients contained in the substance;
 - b. The amount of such substance that constitutes a single serving;
 - c. The total percentage and milligrams of all THCs included in the substance and the total number of milligrams of all THCs that are contained in each serving; and
 - d. That the product may not be sold to persons younger than 21 years of age, if it contains THC.
 - Accompanied by a certificate of analysis produced by a laboratory accredited to ISO/IEC 17025 that states the total THC concentration of the substance or the total THC concentration to ISO/IEC 17025 of the batch from which the substance

originates. The certificate of accreditation issued by a third-party accrediting body to the laboratory shall be available for review at the location at which the product is offered for sale.

- Potential penalty for failing to comply with the provisions of the Industrial Hemp Law related to regulated hemp products:
 - Civil penalty of up to \$10,000 each day a violation occurs

POTENTIAL HEMP-RELATED PENALTIES EFFECTIVE JULY 1, 2023

FOOD AND DRINK LAW VIOLATIONS

- Denial, revocation, or suspension of your Food Permit
- Class 1 misdemeanor
- Civil penalty of up to \$10,000 each day a violation occurs

VIRGINIA CONSUMER PROTECTION ACT VIOLATIONS

- Civil penalty of up to \$2,500 per violation
- Civil penalty of up to \$5,000 for a second or subsequent violation of the THC-related provisions in the VCPA
- Denial, suspension, or revocation of your Food Permit

POTENTIAL HEMP-RELATED PENALTIES EFFECTIVE AT A FUTURE DATE*

INDUSTRIAL HEMP LAW – REGULATED HEMP PRODUCT VIOLATIONS

- Civil penalty of up to \$10,000 each day a violation occurs

Questions regarding industrial hemp extracts or food containing an extract?

[VDACS's Food Safety Program](#)
hempenforcement@vdacs.virginia.gov

Questions regarding the industrial hemp grower, processor, or handler registrations?

[VDACS's Industrial Hemp Program](#)
hemp@vdacs.virginia.gov

Questions regarding the Virginia Consumer Protection Act (VCPA) or the sale of a synthetic derivative of THC?

The VCPA is enforced by the Office of the Attorney General. If you have questions regarding the VCPA, you should consult your own legal counsel.