



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

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TO: Virginia Food Manufacturers, Virginia Food Storage
Warehouses, Virginia Retail Food Establishments,
Virginia Registered Industrial Hemp Processors, Virginia
Registered Industrial Hemp Dealers

DATE: August 16, 2022

RE: Manufacture and Sale of Products that Contain Cannabinoids may be Considered Adulterated

The Virginia Department of Agriculture and Consumer Services (VDACS) has observed many retail establishments offering products for sale that are intended for human consumption and that contain cannabinoids. These products may be considered adulterated if they contain any ingredient that is not approved as a food pursuant to the Virginia Food and Drink Law (Law), or if the products are not manufactured in a facility that is under inspection in accordance with the Law. Section 3.2-5145.1 of the Law defines “industrial hemp extract” as an extract (i) of a Cannabis sativa plant that has a concentration of tetrahydrocannabinol that is no greater than that allowed for hemp by federal law and (ii) that is intended for human consumption. Section 3.2-5145.2 of the Law deems an industrial hemp extract a food and states that such extract is subject to the requirements of the Law. Section 3.2-5145.3 of the Law establishes the requirements that must be met for a manufacturer of an industrial hemp extract or a food containing an industrial hemp extract to be considered an approved source. VDACS considers any food that contains a cannabinoid that does not meet the definition of industrial hemp extract and that was not manufactured by an approved source to be adulterated and any person who creates or sells a food containing such cannabinoid to be in violation of the Law.

Please be advised that any person who manufactures, sells, or offers for sale an adulterated food product is subject to enforcement actions including the suspension or revocation of the person’s permit issued pursuant to the Food and Drink Law or prosecution for the commission of a Class 1 misdemeanor.

Note that the manufacturing and sale of food products containing hemp extract is still lawful when the requirements in Law are met. VDACS will continue to assist food manufacturers and retail food establishments that wish to manufacture and/or sell a food or drink containing cannabinoids extracted from industrial hemp and, containing no more than 0.3 percent THC, to ensure that they are in compliance with the Virginia Food and Drink Law.

The budget recently passed by the General Assembly and signed by the Governor includes additional labeling requirements in the Virginia Food and Drink Law for those industrial hemp extracts that contain any amount of THC. These regulations (<https://law.lis.virginia.gov/admincode/title2/agency5/chapter595/>) went into effect on August 15, 2022 and require the following additional labeling requirements for such industrial hemp extract or food containing such industrial hemp extract:

- The label must state that the extract or food contains THC and may not be sold to any person under the age of 21.
- The label must list all ingredients included in the extract or food.
- The label must include the amount of the extract or food that constitutes a single serving.
- The label must contain the total percentage and milligrams of THC included in the extract or food and the number of milligrams of THC that are contained in each serving.

Please note the budget also includes new provisions of the Virginia Consumer Protection Act (VCPA) that are intended to inform adult consumers about the THC-containing products they are purchasing and help prevent children from consuming potentially intoxicating products. Businesses may not offer for sale or sell an edible or inhaled product that contains THC to a person younger than 21. Additionally, businesses may not sell or offer for sale at retail an edible or inhaled product that contains THC unless the product is packaged and labeled as required by the VCPA. Businesses may not offer for sale or sell an edible or inhaled product that contains THC in a package that mimics a trademarked brand or other famous or identifying mark. Additionally, the VPCA prohibits businesses from manufacturing, offering for sale at retail, or selling at retail a food containing an industrial hemp extract or substance containing THC that depicts or is in the shape of a human, animal, vehicle, or fruit. The Office of the Attorney General is the agency authorized to address violations of the VCPA.