



*VIRGINIA DEPARTMENT  
OF AGRICULTURE AND  
CONSUMER SERVICES*

## **REPORT ON HEMP ENFORCEMENT ACTIONS**

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### **Document Title**

Report on Hemp Enforcement Actions

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### **Legislative Mandate**

3<sup>rd</sup> enactment of Chapters 744 and 794 of the 2023 Acts of Assembly

## **EXECUTIVE SUMMARY**

The 3<sup>rd</sup> enactment of Chapters 744 and 794 of the 2023 Acts of Assembly require the Virginia Department of Agriculture and Consumer Services (VDACS) to collect and compile information regarding enforcement actions taken by VDACS pursuant to Va. Code § 3.2-5145.2:1, as amended by these acts, and the nature of the products manufactured, sold, or offered for sale in violation of this amended section. VDACS is required to report its findings by November 1, 2023, to the Governor and the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on General Laws.

## HEMP PRODUCT ENFORCEMENT

The 3<sup>rd</sup> enactment of Chapters 744 and 794 of the 2023 Acts of Assembly require the Virginia Department of Agriculture and Consumer Services (VDACS) to collect and compile information regarding enforcement actions taken by VDACS pursuant to Va. Code § 3.2-5145.2:1, as amended by these acts, and the nature of the products manufactured, sold, or offered for sale in violation of this amended section. VDACS is required to report its findings by November 1, 2023, to the Governor and the Chairmen of the Senate Committee on Rehabilitation and Social Services and the House Committee on General Laws.

The 2023 Session of the General Assembly amended the Code of Virginia, in part, to establish new requirements and restrictions, effective July 1, 2023, for certain hemp-derived products. These amendments include new provisions in Virginia's Industrial Hemp Law (Va. Code § 3.2-4112 et seq.) and Food and Drink Law (Va. Code § 3.2-5100 et seq.) that establish the following new requirements for an industrial hemp extract or food containing an industrial hemp extract ("edible hemp product"):

- Industrial hemp extracts and food containing an industrial hemp extract, when offered for retail sale, may not exceed 0.3 percent total tetrahydrocannabinol (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.
- Products must be in child-resistant packaging, if they contain 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.
- Products 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, products 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 must 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.

These new amendments are in addition to existing Food and Drink Law requirements for the manufacturing or sale of industrial hemp extracts intended for human consumption, including the following:

- 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 2023 amendments to the Food and Drink Law also added the following penalties for failing to comply with the hemp-related provisions of the Food and Drink Law or regulations adopted pursuant to the Law:

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

On July 10, 2023, the Virginia Department of Agriculture and Consumer Services (VDACS) Food Safety Program began enforcing these new restrictions for edible hemp products that are manufactured or offered for retail sale in the Commonwealth. Through October 24, VDACS staff has conducted inspections in 21 businesses located around the state and cited 2,875 violations that resulted in over \$1.6 million in preliminary civil penalty assessments. Please see Appendix 1 for the matrix that VDACS uses to assess civil penalties when it identifies violations of these new restrictions. In an effort to bring businesses into compliance and remove intoxicating or adulterated items from shelves quickly, businesses with violations that were willing to work quickly with VDACS, by removing products and admitting guilt, were offered a reduction of the civil penalty that was assessed during the initial inspection.

The goal of enforcement is not to harm legitimate businesses. Instead, VDACS has focused on removing dangerous, intoxicating items from store shelves as quickly as possible for the safety of all Virginians. Many of these businesses have agreed to remove these items from retail shelves.

Businesses found in violation of these hemp-related requirements are given 30 days to respond by signing a consent resolution, which is an agreement to cease selling products in violation of the Food and Drink Law and related regulations, and paying a reduced penalty; requesting an informal fact-finding conference; or paying the penalty in full. At this time, 11 businesses have signed consent resolutions, agreed to cease selling illegal products, and paid a total of \$73,250 in reduced penalties.

Pursuant to Virginia’s Administrative Processes Act, any business cited for violations and assessed a civil penalty may request an informal fact-finding conference to present additional facts pertinent to the case as part of the administrative process. Upon completion of the hearing, there may be an adjustment in penalties related to the evidence presented. Retailers suspected of selling products that are considered criminally illegal are referred to law enforcement for addressing potential violations of Virginia’s criminal statutes. Please see Appendix 2 for the summary and current status of the edible hemp product enforcement actions that VDACS has initiated since July 10.

To date, enforcement activities have been conducted primarily with existing food safety inspectors. VDACS is currently in the process of hiring additional staff members to focus on edible hemp product and smokable hemp product enforcement.

## **NATURE OF VIOLATIVE PRODUCTS**

From July 10, 2023, through October 24, 2023, the VDACS Food Safety Program conducted edible hemp product inspections at 21 businesses and evaluated 810 edible hemp products. Of the 810 products evaluated, 793 products were in violation of one or more of Virginia’s requirements for edible hemp products. Please see Appendix 3 for examples of the products found in violation of these requirements.

Of the 21 businesses inspected since July 10, 15 businesses did not have the required food safety inspection and food permit or had not certified to VDACS that they were exempt from the required inspection. Fifteen of the 21 businesses had not submitted an Edible Hemp Products Disclosure form to advise VDACS that the business intended to sell edible hemp products.

The manufacturers of 682 of the 810 edible hemp products evaluated did not appear to have been inspected by the food safety regulatory agency in the location in which the product was manufactured. 309 products did not list the name and address of the manufacturer on the product’s label, as required by the Food and Drink Law.

700 products did not have either a certificate of analysis from an ISO 17025 accredited testing laboratory or a certificate documenting the testing laboratory’s ISO 17025 accreditation available for review at the point of sale.

167 products had labels that indicated the product’s total THC concentration exceeded 0.3 percent. 345 products had labels that indicated the product exceeded the limit of two milligrams of THC in the package without the required 25 milligrams of cannabidiol (CBD) for every one milligram of THC. 259 products labeled as containing one or more specific cannabinoids did not declare the number of milligrams of each cannabinoid listed on the label.

In violation of Section 3.2-5145.4:1 of the Food and Drink Law:

- 165 products containing THC were not in child-resistant packaging;
- The label of 584 products containing THC did not state the percentage of THC in the package;
- The label of 290 products containing THC did not state the number of milligrams of THC in the package;
- The label of 308 products containing THC did not state the number of milligrams of THC per serving;

- The label of 294 products did not state the amount of food that constitutes a single serving;
- The label of 375 products did not state a batch identification number; and
- The label of eight products included claims that would cause the product to be an unapproved drug, such as a claim that the product is intended for the diagnosis, cure, mitigation, treatment, or prevention of a disease.

309 products containing THC were not labeled with the the required statement that the product contains THC and may not be sold to persons younger than 21.

429 products contained cannabinoids that were lab-created and not extracted from the hemp plant. Additionally, 228 products were found to contain synthetic derivatives of THC, the sale of which violates the Virginia Consumer Protection Act (VCPA).

195 products did not have a proper statement of identity on the principal display panel of the product's label. 452 products did not have a proper statement of net quantity of contents on the principal display panel of the product's label. 165 products did not have a complete or correct statement of ingredients on the product's label. Additionally, 49 products contained undeclared allergens.

12 products containing THC were equipped with labeling that mimicked trademarks or famous marks of another manufacturer in violation of the VCPA. 52 products containing THC were shaped like animals or fruits in violation of the VCPA.

Please note that certain violations are grouped by subdivision as established in law. Therefore, a product that is documented to be in violation of more than one requirement of a particular subdivision may only be cited for one violation for that subdivision. As a result, VDACS documented more individual violations (6,407) than it did violations for which VDACS assessed civil penalties (2,875).

# APPENDIX 1

## Virginia Department of Agriculture and Consumer Services

### Virginia Industrial Hemp Extract Intended for Human Consumption Law Civil Penalty Matrix Guidelines for Enforcement

Adopted: July 10, 2023

#### **SECTION 1: AUTHORITY**

Section 3.2-5145.2:1 of the Virginia Industrial Hemp Extract Intended for Human Consumption Law authorizes the Commissioner of Agriculture and Consumer Services to assess a civil penalty not to exceed \$10,000 for each day certain violations of the Law occur.

#### **SECTION 2: DEFINITIONS**

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise.

**“Commissioner”** means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

**“Department”** means the Virginia Department of Agriculture and Consumer Services.

**“Hearing officer”** means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia.

**“Notice of Alleged Violation and Penalty Assessment”** means a written notification from the case reviewer to the responsible party alleged to have committed a violation of the Virginia Industrial Hemp Extract Intended for Human Consumption Law that identifies the specific violation committed and indicates the amount of the civil penalty assessed.

**“Responsible party”** means the person or business alleged to have violated the Virginia Industrial Hemp Extract Intended for Human Consumption Law.

**“Virginia Food and Drink Law”** means Chapter 51 of Title 3.2 of the Code of Virginia (Va. Code § 3.2-5100 *et seq.*)

**“Virginia Industrial Hemp Extract Intended for Human Consumption Law” or “Law”** means Article 5 (Va. Code §§ 3.2-5145.1 through 3.2-5145.5) of the Virginia Food and Drink Law.

#### **SECTION 3: PROVISION FOR CIVIL PENALTIES GENERALLY**

Any responsible party violating any section of the Law may be assessed a civil penalty by the Department in an amount not to exceed \$10,000 for each day of a violation. In determining the amount of any civil penalty, the Department shall give due consideration to these guidelines for enforcement. Any such civil penalties shall be collected by the Commissioner, and the proceeds shall be payable to the State Treasurer.

## **SECTION 4: PROCEDURE FOR CIVIL PENALTY ASSESSMENT**

### **A. Witness of Alleged Violation**

A Department employee, upon witness of an alleged violation of the Law, shall submit documentation of proof of alleged violation, including all relevant facts, for review by a case reviewer designated by the Commissioner.

### **B. Notice of Alleged Violation and Penalty Assessment**

Upon review of all documentation of proof of the alleged violation, if the case reviewer concurs that an alleged violation has occurred, the case reviewer shall send to the responsible party a Notice of Alleged Violation and Penalty Assessment, which shall include all documentation of relevant facts, a notice of the potential civil penalty assessment, and a proposed consent resolution. The Notice of Alleged Violation and Penalty Assessment shall advise the responsible party that he may (i) agree to the violation and civil penalty assessment; sign a consent resolution; waive his rights to an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia (Code); and pay the civil penalty, which shall be due within 30 days, or (ii) request an informal fact finding conference pursuant to § 2.2-4019 of the Code by the date stated in the Notice of Alleged Violation and Penalty Assessment.

### **C. Informal Fact Finding Conference**

The responsible party shall have an opportunity to request an informal fact finding conference. If the responsible party desires an informal fact finding conference, he shall request such by the date stated in the Notice of Alleged Violation and Penalty Assessment, which shall be at least 14 days after the date of the Notice of Alleged Violation and Penalty Assessment. The Commissioner shall designate Department staff to hold an informal fact finding conference pursuant to § 2.2-4019 of the Code, render a case decision, and assess a civil penalty after considering the demonstrated good faith of the responsible party in attempting to achieve compliance after receipt of the Notice of Alleged Violation and Penalty Assessment. Following the informal fact finding conference, the Department shall send to the responsible party the case decision, including the fact basis for the case decision, and the civil penalty assessed.

### **D. Formal Hearing**

The responsible party may appeal a case decision to the Commissioner pursuant to § 2.2-4020 of the Code. If the responsible party intends to appeal the case decision, he shall notify the Commissioner in writing by the date stated in the case decision, which shall be at least 14 days after the date of the case decision. The Commissioner shall arrange for a hearing officer and location of the formal hearing. The hearing officer shall hear the relevant information about the case, consider the facts of all violations identified in the case, and evaluate the civil penalty assessed. The hearing officer shall transmit his findings and recommendations to the Commissioner as required in § 2.2-4024(D) of the Code. The Commissioner shall consider the findings and recommendations of the hearing officer and render a case decision within the timeframe established in § 2.2-4021(C) of the Code.

## **SECTION 5: ASSESSMENT OF SEPARATE VIOLATIONS**

Each violation shall be assessed separately for the purpose of determining the total civil penalty assessment. Each product is subject to a separate violation and penalty. In cases of continued violation, a civil penalty may be assessed separately for each day the violation occurs beginning with the date of the Notice of Alleged Violation and Penalty Assessment and ending with the date of correction of the violation.



**SECTION 6: DETERMINATION OF CIVIL PENALTY**

The following matrix will be used to determine the dollar amount of civil penalties to be assessed per violation per product. See Section 5 for the manner in which separate violations shall be assessed.

Violation		Penalty	
Authority	Category of Violation	1 <sup>st</sup> Violation	2 <sup>nd</sup> and Subsequent Violations
Va. Code § 3.2-5145.2:1(B)(i); Va. Code § 3.2-5145.2:1(B)(ii)	Manufacturing, offering for sale, or selling an industrial hemp extract or food containing an industrial hemp extract without a Hemp Food Safety Permit. Va. Code § 3.2-5100	\$500	\$1,000
Va. Code § 3.2-5145.2:1(B)(iii)	Manufacturing, offering for sale, or selling an industrial hemp extract or food containing an industrial hemp extract without submitting a Hemp Disclosure Form. Va. Code § 3.2-5100	\$500	\$1,000
Va. Code § 3.2-5145.2:1(B)(iv)	Offering for sale or selling at retail a food that (a) contains a total THC concentration greater than 0.3 percent or (b) contains more than two milligrams of total THC per package and does not contain an amount of cannabidiol that is at least 25 times greater than the amount of total THC per package. Va. Code § 3.2-5145.4	\$1,000; potential referral to law enforcement	\$5,000; potential referral to law enforcement
Va. Code § 3.2-5145.2:1(B)(v)	Offering for sale or selling at retail a substance intended to be consumed orally that is advertised or labeled as containing (i) a hemp-derived cannabinoid and (ii) more than two milligrams of total THC per package, if it does not contain an amount of cannabidiol that is at least 25 times greater than the amount of total THC per package.	\$1,000; potential referral to law enforcement	\$5,000; potential referral to law enforcement

Violation		Penalty	
Authority	Category of Violation	1 <sup>st</sup> Violation	2 <sup>nd</sup> and Subsequent Violations
Va. Code § 3.2-5145.2:1(B)(vi)	Manufacturing, offering for sale, or selling an industrial hemp extract or food containing an industrial hemp extract that is not labeled or packaged in accordance with Va. Code § 3.2-5145.4:1 or offered for sale with the documentation required by Va. Code § 3.2-5145.4:1.	\$500	\$2,000
Va. Code § 3.2-5145.2:1(B)(vi)	Other violation of Va. Code §§ 3.2-5145.1 through 3.2-5145.5 or 2 VAC 5-595, <i>Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption</i>	Unless otherwise provided for in Section 6 of this document, \$500	Unless otherwise provided for in Section 6 of this document, \$2,000

**SECTION 7: RECOVERY OF CIVIL PENALTIES**

In accordance with the Virginia Debt Collection Act (§ 2.2-4800 *et seq.* of the Code), the Virginia Department of Agriculture and Consumer Services will take all appropriate and cost-effective actions to aggressively collect all accounts receivable, including the non-payment of civil penalties.

**APPENDIX 2**

## VDACS Hemp Civil Penalties Summary

Last updated: 10/24/23

<b>Violation Letter Date</b>	<b>Firm Name</b>	<b>Locality</b>	<b># of Violations Cited</b>	<b>Total Civil Penalty Assessed</b>	<b>Current Status with Date</b>	<b>Notes</b>
7/13/23	Skyline Cigars & Vapes	Warrenton	67	\$36,500	Payment Received (8/11/23)	Consent resolution received along with payment of \$10,000.
7/17/23	Vini, LLC dba Tobacco Discount	Gate City	160	\$97,500	Payment Received (8/17/23)	Consent resolution received along with payment of \$10,000.
7/18/23	Tobacco World	Warrenton	36	\$18,500	Payment Received (8/29/23)	Consent resolution received along with payment of \$3,750 after IFFC.
7/19/23	N2U LLC	Galax	68	\$34,000	Payment Received (10/11/23)	Consent resolution received along with payment of \$1,000 after IFFC.
7/20/23	Montgomery Tobacco & Vape	Christiansburg	26	\$13,000	Payment Received (9/15/23)	Consent resolution received along with payment of \$2,500 after IFFC.
7/28/23	Cherry Hill Tobacco & Vape	Galax	15	\$9,000	Payment Received (8/25/23)	Consent resolution received along with payment of \$4,500.
7/31/23	Mirgan LLC dba Chesapeake Tobacco & Vape	Chesapeake	22	\$13,000	Payment Received (9/5/23)	Consent resolution received along with payment of \$6,500.
8/10/23	Smoker's World, LLC	Henrico	130	\$74,250	Payment Received* (9/19/23)	Consent resolution received along with payment of \$7,500 after IFFC.
8/14/23	Clyde's Discount Company	Vienna	148	\$90,000	IFFC Held (9/25/23)	Response due 11/8/23.
8/14/23	Yutify	Vienna	6	\$3,000	IFFC Held (9/25/23)	Response due 11/8/23.
8/21/23	King of Smoke	Lynchburg	370	\$224,000	Payment Received* (9/12/23)	Consent resolution received along with payment of \$10,000.
8/29/23	S Tobacco Inc 2 dba Cosmic Smoke & Vape	Williamsburg	249	\$147,500	Payment Received (9/28/23)	Consent resolution received along with payment of \$10,000.
8/29/23	Mary Organic & Tobacco Inc.	Williamsburg	71	\$41,500	Payment Received (10/6/23)	Consent resolution received along with payment of \$7,500 after IFFC.

Violation Letter Date	Firm Name	Locality	# of Violations Cited	Total Civil Penalty Assessed	Current Status with Date	Notes
9/5/23	Tobacco Hut & Vape Village	Charlottesville	117	\$67,500	IFFC Held* (9/27/23)	Response due 11/7/23.
9/14/23	Potomac Vape Inc. dba Potomac Distro	Prince William	834	\$417,000	IFFC Held (9/27/23)	Response due 10/19/23. Collection process to begin on 10/26/23 if payment is not received.
9/19/23	THV 17 INC. DbA Tobacco Hut	Hanover	6	\$3,000	Penalty Issued (9/19/23)	Response due 10/19/23. Collection process to begin on 10/26/23 if payment is not received.
9/26/23	Smokersville Inc.	Warren	150	\$82,500	Penalty Issued* (9/26/23)	Response due 10/26/23.
10/2/23	A1 Retail LLC	Roanoke	235	\$138,500	Penalty Issued* (10/2/23)	Response due 11/1/23.
10/10/23	Sammaa Inc. dba Smoke Shop	Virginia Beach	27	\$16,000	Penalty Issued* (10/10/23)	Response due 11/9/23.
10/17/23	Charlottesville Smoke Shop LLC	Charlottesville	97	\$59,000.00	Penalty Issued* (10/17/23)	Response due 11/16/23.
10/23/23	Exotic Vapes LLC	Spotsylvania	41	\$24,000.00	Penalty Issued* (10/23/23)	Response due 11/22/23.

Status of Civil Penalties:

Penalty Issued- Initial status

IFFC Requested- The firm has requested an Informal Fact-Finding Conference and the agency is working to schedule the conference

IFFC Held- The IFFC is completed, hearing documents are being prepared, and the firm is reviewing the decision

Formal Hearing Requested- The firm has requested a Formal Hearing and the agency is working to schedule the hearing

Formal Hearing Held- The Formal Hearing is complete and the agency is waiting on the decision and final action

In Collections- The collections proceedings are in process

Payment Received- Payment has been received and the case is closed

\*- Referred to local law enforcement

APPENDIX 3









