

Virginia Department of Agriculture and Consumer Services

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

Adopted: [5/10/2023 version]

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	1st Violation	2nd 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
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	\$500	\$2,000

	documentation required by Va. Code § 3.2-5145.4:1.		
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.