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DIVISION OF CONSUMER & INDUSTRY SERVICES
HEMP SECTION

HEMP-DERIVED CANNABINOID PRODUCTS
FREQUENTLY ASKED QUESTIONS

In 2023 the Tennessee General Assembly codified statutory requirements for regulation of the hemp-derived cannabinoid (HDC) product market. In 2024 the Tennessee Department of Agriculture (TDA) launched the licensing program that was required by the legislature. Since that time, industry and consumer stakeholders put forward various questions about regulatory requirements surrounding HDCs.

Many of the questions have previously been asked and are under review by TDA for its permanent rulemaking process associated with the program. Answers to those questions will be submitted with the final rulemaking packet, anticipated to be filed in late 2024. However, TDA recognizes that some of the questions may also be applicable under the temporary, emergency rules filed in July 2024.

This document represents the Department's guidance for understanding only those temporary, emergency rules.

EFFECTIVE DATES

The emergency rules have a list at the beginning of each section of what is effective now, but the list does not span the entire rule. TDA has stated in webinars that the entire statute is currently in effect. Please explain.

T.C.A. §§ 43-27-201 thru 211 (the statute) is currently in effect. It imposes various requirements of its own accord outside TDA's rules. These things include, e.g., having a license to make or sell HDC products, 21 and up age restrictions and proof of age requirements on HDC product purchases, behind the counter storage requirements and child-resistant packaging requirements on HDC products offered for sale.

In TDA's emergency rules at Tenn. Comp. R. & Regs. 0080-10-01 and 0080-10-02 (the rules), only a portion of the rules are in effect now, e.g., license requirements, documentation and information that must be submitted to get a license, and TDA inspection authority. Other portions of the rules are not effective now but are listed to provide the HDC industry with notice of things that are anticipated to be in the final rules. Unless otherwise listed in the statute, testing standards and manufacturing, labeling, transportation, and recordkeeping requirements listed in the emergency rules are not currently in effect.

When does enforcement begin?

TDA is focusing the first few months of regulatory efforts on licensing firms and conducting outreach and education re program requirements. TDA does not expect to take adverse action against any firm for not having a license until after October 1, 2024. However, TDA is not the only regulatory agency over the HDC product industry, and other agencies and law enforcement may act against firms for being unlicensed. Consequently, HDC product businesses are strongly encouraged to get licensed with TDA as soon as possible.

Regardless of whether a business is licensed, TDA and other agencies and law enforcement may currently enforce against HDC product businesses any violations of the statute, e.g. sale of HDC products to persons under 21 and failure to keep HDC products behind the counter, etc.

LICENSES

Is every employee required to get his or her own license in order to sell HDC products? Please explain the “per person per location” requirement for HDC product licenses.

An HDC license is required for the business that is manufacturing, distributing, or selling HDC products. HDC licenses are not required for each employee acting on behalf of the business.

The “per person per location” language addresses those situations where either multiple businesses occupy the same physical location or where one business operates multiple locations. E.g., if business X and business Y are both operating at the same physical address, each business will need to obtain its own license for sale of HDC products. If business Z has 8 locations throughout Tennessee, it will need 8 licenses: one for each location.

Who must be listed on an HDC license application?

The business and the person legally responsible for its operations.

If the business is a general partnership (i.e. a partnership that is not formalized as its own legal entity), each partner in the general partnership must be listed in the license application.

If a business is a formal business entity, its registration number with the secretary of state and the state in which it was formed are sufficient for the application requirement, without including Articles of Incorporation, etc.

Employees do not need to be listed on the license application.

If a business is only a distributor of HDC products, what license(s) is it required to have?

HDC product distributors are required to have an HDC Supplier License. If the HDC product distributed is also a food product, the business is required to have both an HDC Supplier License and a Food Manufacturer/Warehouse License.

Is a delta-8 retailer required to have a license?

Yes.

Can a licensed HDC retailer operate at external events other than the licensed address? Are licenses required for each location? Are 1099 sales representatives required to be licensed?

Under the emergency rules a license is required per location where sales of HDC products occur. Consequently, sales by mobile vehicle, satellite external events, and temporary locations like farmers markets will require a license for each location where HDC products are offered for sale.

Regarding 1099 sales reps, if a business in Tennessee is supplying HDC products in commerce, the business must be licensed; its employees are not required to be separately licensed.

The Department may address further questions on the topic of mobile and transient sales locations within the permanent rules.

Please clarify/explain the K-12 school prohibition for licenses.

Retailers of HDC products cannot be located within 1,000 feet of any school that serves any population of K-12 students. This includes any school, whether private or public, and any grade set between K and 12, e.g. K-6; 9-12; or pre-K through 5.

Measurement of the 1,000 feet is taken from the closest point of the retail parcel plot to the closest point of the school parcel plot, i.e. line to line. The measurement is taken without regard to intervening objects or structures, including buildings and landscape grade.

Measurements are accepted on license applications using online available tools, e.g. Google maps.

Are online only sellers required to have a Tennessee license?

If an online retailer is located in Tennessee, that retailer must have a Tennessee license.

Where do I go online to apply for an HDC license?

<https://www.tn.gov/agriculture/businesses/hemp/hemp-derived-cannabinoids/hem-derived-cannabinoids-licensing.html>

Where do I go online to request a background check for the license?

<https://www.tn.gov/tbi/divisions/cjis-division/background-checks.html>

What crimes will disqualify an applicant from an HDC license?

Drug-related felony convictions in any state or federal jurisdiction. Persons convicted of these offenses are ineligible to receive an HDC license while serving their sentence (including parole) or 10 years from the date of the conviction, whichever is longer.

What other information or licenses do I need if I am interested in growing hemp in Tennessee?

Businesses that grow hemp in Tennessee must have a Hemp Producer License. More information is available at <https://www.tn.gov/agriculture/farms/hemp-industry.html>

Can I grow hemp and distribute and retail HDC products out of one location?

Yes, if compliant with regulatory requirements and properly licensed for each activity at the location.

If a business is vertically integrated, does it need a license for growing and/or manufacturing and/or retailing? (e.g. if a retailer buys in bulk and repackages or if a grower trims flower and sells it)

A business needs each license for any activity covered by the particular license. I.e., growing requires a grower's license; manufacturing (including trimming) requires a manufacturer's license; selling retail requires a retail license.

Does a Tennessee license allow me to ship HDC products into other states?

For questions about other state regulations re hemp and HDC products, businesses should contact those states, federal authorities, and/or private counsel.

Is a recall program required to obtain a license?

Conducting a product recall may be required under the emergency rules, but having a recall plan and training procedures are not required to obtain an HDC license.

For distributors, do delivery personnel need to have a physical copy of the distributor's license on their person or is it sufficient to have the permit number displayed on the delivery vehicle?

Under the statute at T.C.A. § 43-27-208,

- (a) Except as provided in subsection (b), a person transporting products containing a hemp-derived cannabinoid into, within, or through this state shall carry:
 - (1) Documentation sufficient to prove that the products being shipped or transported:
 - (A) Were produced from hemp that was lawfully produced under a state or tribal hemp plan approved by the United States department of agriculture, under a hemp license issued by the United States department of agriculture, or otherwise in accordance with federal regulations through the state or territory of the Indian tribe, as applicable; and
 - (B) Do not exceed the cannabinoid limits for hemp-derived cannabinoids; and
 - (2) A bill of lading that includes:
 - (A) Name and address of the owner of the products;
 - (B) Point of origin;
 - (C) Point of delivery, including name and address;
 - (D) Kind and quantity of packages or, if in bulk, the total quantity of products in the shipment; and
 - (E) Date of shipment.
- (b) Subsection (a) does not apply to a person in possession of products containing a hemp-derived cannabinoid that were purchased from a retailer that is licensed under this part.

Other transportation requirements under the emergency rules are not currently effective.

PRODUCTS

What products are required to be registered with the Department?

HDC products are not required to be registered with the Department.

Are liquor stores and other 21 and over establishments exempt from keeping HDC products behind the counter?

Regardless of type of business, all HDC products held for retail sale must be held behind the counter. Under the emergency rules, "counter" means a physical barrier that necessitates the seller's assistance in order to access product prior to its sale. Consequently, HDC products may be held in the common area of the store in locked cabinets, display cases, or coolers, etc.

Signage alone of 21 and over age requirements do not meet the requirement for preventing physical access to product.

Please clarify post-decarboxylation testing standards and whether it accounts for total THC in samples tested.

Pursuant to the statute passed by the Tennessee legislature, departmental testing of HDC products must be done by liquid chromatography tandem mass spectrometry, in a manner similarly reliable to post-decarboxylation, to determine a cannabinoid profile of samples tested, including their THC concentrations. T.C.A. § 43-27-207(d)(4). A manner similarly reliable to post-decarboxylation may account for both THC and THCa.

Testing standards under the emergency rules are not currently in effect.

Are vapes affected by THC testing standards or just flower? Do testing standards apply to HDC products that are purchased out of state? Do testing standards apply to HDC products that are housed in Tennessee solely for commercial distribution out-of-state?

If an HDC product is distributed in commerce in Tennessee, it is subject to testing standards. Testing standards under the emergency rules are not currently in effect.

Are delta-8 and delta-10 affected by THC testing standards and/or HDC limits per serving?

Delta-8 and delta-10 are HDCs under the law passed by the legislature, so production and sale of their products is regulated. Testing standards under the emergency rules are not currently in effect.

Do retailers have to submit products for testing?

No. Retailers are not required to independently test products they have purchased for resale, but retailers are accountable to sell only those products that comply with manufacturing and testing standards. The Department may sample the retailer's products for compliance with those standards.

Testing standards under the emergency rules are not currently in effect.

Please explain the 25 mg limit on HDCs.

Under T.C.A. § 43-27-209, ingestible products cannot contain per serving more than 25 mg of any HDC or combination of HDCs. E.g., if a product contains 26 mg of delta-8 per serving, it has more than 25 mg of an HDC per serving and therefore is not in compliance. Also e.g., if a product contains 13 mg of delta-10 and 13 mg of THCP per serving, it has more than 25 mg of any combination of HDCs and therefore also is not in compliance.

Serving size means a quantity of HDC product reasonably suitable for a single person's daily use, designated by the manufacturer as reasonably understood to be a single unit of the product for consumption.

Under T.C.A. § 43-27-209, the statute indicates that for ingestible products the label must contain both the amount of "cannabinoid" in each serving and the total amount of "hemp-derived cannabinoid" in the entire package, both measured in mg. Please explain.

All HDC products must include on their labels the total amount of HDCs in the entire package, measured in mg. If the product is an ingestible product, it must also include on its label the total amount of HDCs per serving, measured in mg.

What shapes are prohibited for HDC products?

Ingestible HDC products cannot be formed in the shape of animals or cartoon characters.

What if products are too small to fit the parameters of labeling requirements?

Labeling requirements under the emergency rules are not currently in effect.

Please clarify. What is a batch?

'Batch' is a single stock keeping unit with common cannabinoid input or a hemp flower of the same varietal and harvested on the same date and manufactured during a defined cycle in such a way that it could be expected to be of a uniform character." T.C.A. § 43-27-202. "'Batch' [includes] an individual production lot of manufactured product." Tenn. Comp. R. & Regs. 0080-10-01-.02.

An example: if a production lot of cookies yields 48 cookies, all 48 cookies are considered part of one batch.

Can a restaurant sell alcohol and an HDC product to the same guest in the same visit? What restaurant employees are required to be licensed for the sale of HDC products? Is there a limit to the number of HDC product servings a restaurant can serve a person in the same visit?

Restaurants that sell or offer for sale HDC products must be licensed; its individual employees do not require HDC licenses for their work at the restaurant.

The department does not regulate the sale of alcohol by the drink. Questions about alcohol service relative to HDC product sales should be referred to the Alcoholic Beverage Commission and/or private counsel.

Does the 6% tax apply to non-HDC products, e.g. CBD, CBN, and CBG?

For questions about tax requirements, contact the Tennessee Department of Revenue at (615) 253-0660 or revenue.support@tn.gov.

Does the 6% tax apply to distributors or just retailers?

For questions about tax requirements, contact the Tennessee Department of Revenue at (615) 253-0660 or revenue.support@tn.gov.