

Division of Food and General Environmental Health Services

Food Safety Program

Industrial Hemp Extract for Human Consumption in Food Establishments

House Bill (1430) and Senate Bill (918), passed during the 2020 General Assembly Session, states in part (1) that an industrial hemp extract as defined in the bill is a food subject to applicable laws and regulations, and (2) the terms in which a manufacturer of industrial hemp extract or food is considered an approved source. This change is effective April 6, 2020. This document provides guidance and information related to industrial hemp extract usage in food establishments permitted by the Virginia Department of Health (VDH). For the purposes of this guidance, industrial hemp extract for human consumption will be shortened to 'IHE'.

STATUTORY REFERENCES

§3.2-5145.1. Definitions

“Industrial hemp extract” means 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.

§3.2-5145.3. Manufacturer of industrial hemp extract or food containing an industrial hemp extract.

A manufacturer of an industrial hemp extract or food containing an industrial hemp extract shall be an approved source if the manufacturer operates:

1. Under inspection by the responsible food regulatory agency in the location in which such manufacturing occurs; and
2. In compliance with the laws, regulations, or criteria that pertain to the manufacturer of industrial hemp extracts or food containing an industrial hemp extract in the location in which such manufacturing occurs.

OEHS, DFGES, Industrial Hemp Extract for Human Consumption in Food Establishments (April 2022)

EVALUATING IHE UNDER THE FOOD REGULATIONS

Under the Food Regulations (12VAC5-421 et seq.) IHE extract and foods containing IHE extract may be served in VDH permitted food establishments when the operator provides documentation that the extract/food was obtained from an approved source. Plant materials, such as leaves, stems, or flowers (including hemp microgreens) derived from industrial processed hemp, are not considered under the scope of § 3.2-5145.3., which outlines approval of products for human consumption.

IHE as a Food Ingredient

Below is a list of commonly used names for IHE that staff may see on labels.

- CBD/Hemp Oil
- CBD/Hemp Extract
- Full or Broad Spectrum CBD Oil
- CBD Isolate
- Hemp/CBD Tincture (hemp extract in alcohol)

[FDA issued GRAS notices for hemp seed-derived ingredients for use in human food](#) in December 2018. Hulled hemp seed ([GRN765](#)), hemp seed protein powder ([GRN771](#)), and hemp seed oil ([GRN778](#)) ingredients are GRAS under their intended conditions of use.

Verification of Approved Source

Environmental health specialists (EHS) may observe IHE or IHE infused food products manufactured within Virginia or out of state during the course of conducting an inspection. When determining if the IHE or IHE infused food product is from an approved source, EHS should apply the following:

Manufactured in Virginia

EHS shall refer to the “Industrial Hemp Processors under Food Safety Inspection” [list](#) maintained by Virginia Department of Agriculture and Consumer Services (VDACS) to determine if IHE manufactured in Virginia is from an approved source. If the firm is not listed and you have additional questions about the inspection status of an instate manufacturer, contact foodsafety@vdacs.virginia.gov.

Manufactured Out of State

EHS shall consider, as an approved source, those out of state manufacturers who are manufacturing IHE or IHE infused food products in compliance with the food laws and regulations in the state in which the product(s) is manufactured. Examples of verification of compliance may include letters or certificates from the regulatory authority with jurisdiction over the IHE manufacturer. Note some jurisdictions may issue manufacturers a registration or license to possess hemp products for the purpose of manufacturing; these registrations and licenses to possess are not verifications that the manufacturer is an inspected source.

Enforcement

Staff shall follow guidance under [ENV-420 Condemnation and Impoundment of Food](#) when it is determined based on observations that IHE or food products containing IHE are unsafe or from an unapproved source.

Marking Guidance

Item 11. (12VAC5-421- 270.A/ 3-201.11 Compliance with Food Law.)

A. Food shall be obtained from sources that comply with law.

Item 11 should be marked OUT of compliance when a food establishment cannot provide evidence IHE or IHE infused food products are in compliance with applicable law related to source.

Item 27. (12VAC5-421-350/3-202.12. Additives. Food Additives: Approved & Properly Used)

Food shall not contain unapproved food additives (...).

Item 27 should be marked OUT of compliance when a hemp product that is not an industrial hemp extract (IHE) as described above, or a GRAS food additive, is used in a food establishment (e.g. hemp leaves, hemp flowers; i.e. is not an approved food additive).