

TENNESSEE GROWERS COALITION 

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# Hemp Law 2024

## Today's Topics

- Legislative Update
- Federal Law Developments
- New Tenn. Statute and Rules
- Enforcement
- THCa Issues
- Q & A

# Legislative Developments

TENNESSEE GROWERS COALITION

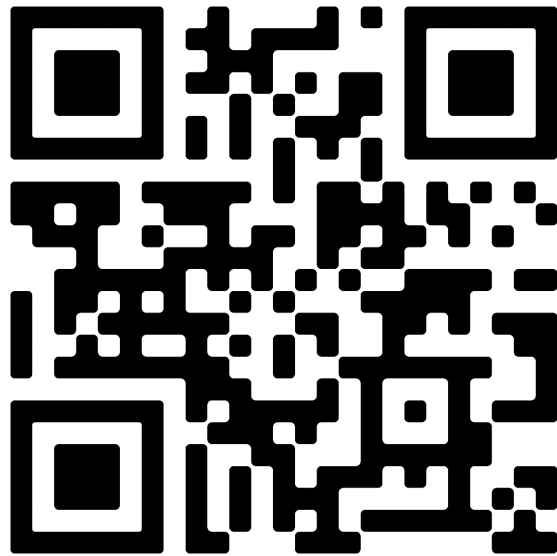


## Federal Law Developments

- Potential rescheduling of marijuana from Schedule I to Schedule III
- Effects: intellectual property rights, banking, and taxes
- Farm Bill Expiration (Sept 2024)

# New Statute and Rules

Scan this QR Code to follow along with the statute and rules:



## Tax

### § 67-6-232

(a) For the exercise of the privilege of engaging in the business of selling products containing a hemp-derived cannabinoid . . . there is levied an additional tax at the rate of **six percent (6%) of the sales price of products containing a hemp-derived cannabinoid when sold at retail in this state.**

(b) The Tax levied under this section is due and **payable monthly** on the first day of each month . . . .

# Sales

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## § 43-27-203

(b)(1) It is an offense to knowingly sell or distribute a product containing a hemp-derived cannabinoid without having first obtained **proof of age** from the purchaser or recipient.

(2) It is an offense for a person to knowingly sell or distribute a product containing a hemp-derived cannabinoid to a person who is **under twenty-one (21) years** of age or to purchase a product containing a hemp-derived cannabinoid on behalf of a person who is under twenty-one (21) years of age.

## Sales

### § 43-27-203

(c) **It is an offense to knowingly distribute samples of products** containing a hemp-derived cannabinoid in or on a public street, sidewalk or park.

(d) A violation of this section is a Class A misdemeanor.



## Sales

### § 43-27-204

(b) A product containing a hemp-derived cannabinoid must be **maintained behind the counter** of a retail establishment in an area inaccessible to a customer.

(c) A violation of this section is a Class A misdemeanor.

# Sales

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## § 43-27-206

(3)(A) A retail location that is within one thousand feet **(1,000’)** of a **private school , public school, or charter school** that serves any grades from kindergarten through grade twelve (k-12) shall not sell products containing a hemp-derived cannabinoid, unless the applicant provides the department with documentation that establishes that products containing a hemp-derived cannabinoid were being offered for sale at retail at such location on December 31, 2023.

## Licenses

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### § 43-27-206

(a) **A person or entity** that is in the business of **manufacturing or selling products containing a hemp-derived cannabinoid** in this state, including a supplier or retailer, **must obtain a license** from the department of agriculture authorizing the person or entity to engage in that business **prior to the commencement of business or by July 1, 2024**, whichever is later.

# Licenses

## § 43-27-206

(b)(1) In order to obtain and maintain a supplier or retailer license under subsection (a), a person must:

(a) Submit [information requested by Dept. of Ag];

(b) Pay . . . (\$500) for a supplier or . . . (\$250) per retailer per location;

(c) Consent to reasonable inspection and sampling . . . of products . . . ; and

(d) Submit to a criminal history background check . . . .

## Licenses

0080-10-01-.03 (Producers); 0080-10-02-.03 (Manufacturers & Distributors); 0080-10-03-.03 (Retail Sales)

(1) A license is required **per person per location.**

(3) Licensees **must notify the department of any changes . . . within 30 days . . . .**

(5) Licenses expire on June 30 following their issuance.

# Transportation

## § 43-27-208

(a) **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 [from an approved plan];

(B) Do not exceed the cannabinoid limits for [HDCs]; and

(C) A bill of lading.

## Movement Permits

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0080-10-01-.04

(1) Licensees shall not move **rooted hemp** plants without a valid movement permit issued by the department. . . . .

(2) Hemp movement permits are required per vehicle per day . . . .

## Transportation

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0080-10-02-.07

(1) In addition to transportation requirements under the Act, **HDC product licensees must make immediately available** upon request **COAs for any HDC product**, including raw product, **that is transported in commerce.**



# Labeling

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## § 43-27-209

(a) A product containing [HDC] that is sold at retail must:

- (2) Be labeled with:
  - (A) A list of **ingredients** and possible **allergens** and a **nutritional fact panel**;
  - (B) A **warning statement** as . . . required by rule[s];
  - (C) If the product is ingestible, the **amount of cannabinoid in each serving**, measured in milligrams;
  - (D) The total amount of hemp-derived cannabinoid in the **entire package**, measured in milligrams;

# Labeling

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## § 43-27-209

(E) The **net weight** of the product;

(F) A **quick response (QR)** code that can be scanned to access a website providing the product's **batch number, date received, date of completion, method of analysis** for the testing report required under § 43-27-207, including information regarding results of the product's **full-panel and potency tests** conducted pursuant to § 43-27-207(a) and;

(G) An **expiration date**.

# Labeling

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0080-10-02-.06 Labels.

For **all** products:

**“WARNING:** This product contains hemp-derived cannabinoids. Must be at least 21 years of age to possess or consume. Use of this product while pregnant or breastfeeding may be harmful. Consumption may impair ability to drive or operate machinery. This product is not approved by FDA for cure, mitigation, treatment, or prevention of disease. May contain unknown or unidentified substances that have harmful or toxic effects. Keep out of reach of children and animals.”

# Labeling

0080-10-02-.06 Labels.

For **inhalable** products:

**“WARNING:** Inhalation of cannabis smoke has been associated with lung injury. **DO NOT EAT.”**

The words “Warning” and “Do not eat” must be printed in bold font, all capital letters.

# Testing

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§ 43-27-207

**The (new) obligation to test rests with product licensees.**

Retailers must collect and maintain COAs.

Growers must test, but under prior statute.

# Testing

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## § 43-27-207

(a) Testing of products and substances must be conducted as follows:

(1) **Full-panel testing** on all active cannabinoid molecules must be conducted **prior to final production** of products containing a hemp-derived cannabinoid; and

(2) **A potency test** must be conducted **on finished goods** to confirm potency is consistent with stated potency on the packaging.

# Testing

## 0080-10-02.02 Definitions

(o) **Total THC** means the potential total delta-9 tetrahydrocannabinol (THC) content derived from the sum of THC and delta-9 tetrahydrocannabinol acid (THCA) reported on a dry weight basis, calculated as: (cannabinoid concentration (mg/g)) + (cannabinoid acid form concentration (mg/g) x 0.877)

- Information on tolerances for products can be found in 0080-10-02-.05

## Testing

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0080-10-01-.05; 0080-10-02-.09; 0080-03-.06

(1) **Scope.** **The department may enter any premises during normal business hours**

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(2) **Frequency.** The department may conduct inspections **as often as necessary** to determine compliance with the Act and this chapter



# Testing

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0080-10-02-.05

## **(c) Failed testing.**

1. An HDC product licensee must report to the department within **24 hours** of receiving any COA reporting test results for a product sample that does not meet all tolerances set forth in this rule.
2. **Retesting.** Any sample failure may be re-submitted for confirmation of testing failure.

# Testing

0080-10-02-.05

## 3. Remedy.

### (i) Microbial Contaminants.

(I) [sterilized]; or

(II) **The batch is rendered unusable.**

(ii) For all other component testing failures, an HDC product manufacturer **must render the batch unusable.**

# Testing

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## 0080-10-02-.02 Definitions

(2)(c) **Batch** means **an individual production lot** of manufactured product.

## Records: Producers [Growers]

0080-10-01-.06 Persons must:

(i) **Record each transaction** in which the licensee sells or introduces rooted hemp into commerce. The licensee must keep the record **for two years** from the transaction date. The record must include: the name, contact information, and hemp producer license number for any person who purchased or received the cannabis.

## Records: Manufacturers [Distributors]

0080-10-02-.08

(1) For **each batch of HDC product . . .** , HDC product licensees shall maintain the following **for two years**:

(a) **COAS**, copies of which shall be submitted to all immediate downstream purchasers of the product;

(b) A current copy of **safety data sheets for all solvents** used in manufacturing the HDC product; and

(c) **Distribution records**, including but not limited to **invoices** and **bills of lading**.

## Records: Retail Sales

0080-10-03-.05

(1) For each HDC product offered for sale, HDC retail licensees shall maintain **for two years and readily produce upon request** all records received from their immediate upstream seller of their product, including but not limited to:

(a) **COAs**; and

(b) Inventory records, including but not limited to **invoices** and **bills of lading**.

## Records: Manufacturers & Retail Sales

0080-10-02-.08; 0080-10-03-.05

(2) For any HDC product rendered **unusable** or **disposed** pursuant to this chapter, HDC licensees shall maintain the following **for two years** following disposal:

- (a) Date and manner in which the product was rendered unusable or disposed;
- (b) Batch number; and
- (c) Total volume of product that was disposed.

# Violations

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0800-10-01-.06, 0800-10-02-.10, 0800-10-03-.07

- For a full list of violations, please see sections (1) and (2).

(4) Each violation of the Act or this chapter is grounds for issuance of **stop movement, destruction, or remediation orders** for any cannabis [or HDC product] held by the violator or their agent, **denial or revocation of any license** issued by the department, actions for **injunction**, and imposition of **civil penalties** or pursuit of **criminal charges** against the violator.



## Enforcement

- Since September, **TDDTF has been seizing products and assets** from smoke shops and other retail locations selling hemp-derived cannabinoids
- TDDTF and local **law enforcement can test products on site** to determine if they comply with the 0.3% THC limit
- Disposable vape products containing THCA and THCA flower products have been targeted.

## Civil Asset Forfeiture

- There are few protections for individuals and companies wrongly targeted.
- It may be months before a store owner can make their case when their assets are seized.
- Most civil asset forfeiture resolves through settlements with the agency.

# Getting Your License

- Do it yourself:
  - Visit the department's website for the application (not yet available).
  - License fees:
    - \$250 for growing areas less than 5 acres
    - \$300 for 5-20 acres
    - \$350 for more than 20 acres
    - \$300 for propagators/brokers
    - \$500 for manufacturers/distributors
- Or Burr & Forman can help you obtain your license

## Challenging the THCA Rule

- Submit Public Comments!
  - Submit by 4:30 p.m. CDT February 9<sup>th</sup>
  - Direct link available through Tennessee Growers Coalition
  - Or Send to:  
Annie Balghiti  
P.O. Box 40627  
Nashville, TN 37204

# Challenging the THCA Rule

## Rulemaking process:

- File proposed rule
- Public hearing: February 6<sup>th</sup>
- Revisions to rule
- File final version
- Attorney General Review
- “Government Operations” Review

## Challenging the THCA Rule

- If the “Total THC” rule looks like it will go effect, we will file a lawsuit against the Department of Agriculture to enjoin the rule and prevent its enforcement.



Questions

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