

2022 FEDERAL AND STATE CBD LAWS

FEDERAL

The FDA, in its most recently issued guidance, continues to take the position that it is illegal to market CBD, from any source, in interstate commerce. However, the FDA has not taken any enforcement action other than the issuance of warning letters.

CBD SOURCED FROM HEMP: Under federal law hemp is defined as being “a cannabis plant having a level of 0.3 % delta-9 THC or less on a dry weight basis”. The 2018 Farm Bill removed hemp from being considered a controlled substance under federal law. However, the Farm Bill explicitly continued the FDA’s authority to regulate products containing compounds from cannabis, including CBD.

CBD products may not be marketed with claims of therapeutic benefits without going through the drug approval process. The FDA has issued warnings to companies selling various products containing CBD in violation of the Food, Drug and Cosmetic Act.

The FDA has stated: “Aside from one prescription drug approved to treat two rare, severe pediatric epilepsy disorders, no other CBD products have been evaluated or approved by the FDA. We encourage Americans to consult with their health care providers before using CBD products.”

FDA DRUG APPROVALS: To date, the FDA has only approved one drug, Epidiolex, containing CBD for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients 2 years of age and older. The FDA has also approved two drugs containing synthetic THC, Marinol and Syndros, for the treatment of anorexia associated with weight loss in AIDS patients. Another FDA-approved drug, Cesamet, contains the active ingredient nabilone, which has a chemical structure similar to THC and is synthetically derived.

Selling unapproved products with unsubstantiated therapeutic claims is a violation of federal law. That being said, the sale of some CBD products may be legal under federal law.

Under Federal Law:

- CBD products cannot make health claims. If CBD is marketed as having therapeutic effects, it is regulated as a drug and cannot be sold without FDA approval.
- CBD cannot be sold as a dietary supplement.
- CBD cannot be added to any human or animal food sold in interstate Commerce.
- CBD products must be labeled and sold in compliance with the Food, Drug and Cosmetic Act.
- CBD is not currently prohibited for use in products that are not “drugs” or are not ingested.
- Warning: According to the FDA, CBD can cause liver injury and serious side effects when interacting with alcohol or other drugs and can damage fertility in males.

STATE REGULATION OF CBD

CALIFORNIA: CBD derived from cannabis can and is legally sold in licensed retail cannabis outlets and is regulated in the same way as other cannabis products.

However, licensed retail outlets may not legally sell food, beverages or dietary supplements containing CBD derived from hemp. AB 45 which became law in October 2021, will change this, eventually. The law requires a report to the legislature by July 2022, outlining the steps necessary to incorporate hemp products into the cannabis supply chain.

Through the passage of AB 45, California, in conflict with federal law, has legalized the use of CBD derived from hemp in food, beverages and dietary supplements sold in California (but, as noted, not in licensed cannabis retail outlets). The law provides that health-related statements are prohibited and does not include legalization of “inhalable” hemp products⁴.

California’s cannabis product packaging and labeling laws do not apply to non-banned, hemp-derived CBD products such as cosmetics. However, packaging and labeling of those products may be regulated by federal law.

OTHER STATES: There have been regulatory changes relating to CBD, particularly hemp-based, in many states during the past year. Some of these changes, like California’s, are in conflict with federal law and the FDA guidance. Regulations in other states are still in flux and need to be researched on a case-by-case basis as and when labeling and packaging issues arise.