

Hemp and CBD

Hemp-derived ingredients are found in products including food, beverages, dietary supplements and cosmetics. CDA members have raised questions about whether they can lawfully distribute products containing hemp-derived ingredients, which have become increasingly popular, to their retail customers.

In June 2018, the FDA updated the [Q&A on their website](#), stating that FDA's position that is not legal to sell foods to which CBD has been added, as it is unlawful to add an active ingredient in an approved drug product or a drug product that is the subject of substantial clinical investigations that have been made public to food or dietary ingredients, and CBD has been the subject of substantial clinical investigations that was made public. Although an exception exists if the substance was used in food before clinical investigations began, FDA states that it has not received evidence that this exception, or any other, applies to CBD. Even if this issue were overcome, CBD, like any other ingredient intended for food use, would need to either receive prior approval from FDA or be otherwise general regarded as safe (GRAS). To date, no hemp-derived ingredient has received prior approval from FDA and none has been publicly recognized as GRAS.

Regarding cosmetics, with few exceptions, any ingredient may be used in a cosmetic, provided the ingredient and the finished product are sanitary and the finished product is safe when used as intended. FDA guidance on prohibited and restricted ingredients is available [here](#). While hemp-derived ingredients are not prohibited or restricted by name, including certain hemp-derived ingredients – specifically, THC or CBD – could cause FDA to view the product as “intended for use as a drug”, which would then cause the product to be an unapproved new drug. Specifically, a product that is intended for a therapeutic purpose is a drug, and the “presence of certain ingredients with a therapeutic use that is well-known to the public and industry is one factor that can determine whether a product is intended for use as a drug.”

State regulation

Wholesalers are dealing with a state-by-state patchwork of regulatory and legal requirements for CBD containing products. Nothing in the Farm Bill requires states to change the way they regulate hemp-derived ingredients, and the states have been very active in this area. In July 2018, California set off a flurry of activity when the state issued revised FAQ on cannabidiol (CBD) products in conventional foods and dietary supplements. The FAQ clarified California's position that hemp-derived CBD oil and CBD products are prohibited, while hemp seeds and hemp seed oil are explicitly permitted in foods and dietary supplements.

Actions from other states encompass both ends of the spectrum. As of August 8, 2018, in Colorado, food and drugs containing industrial hemp are not adulterated or misbranded under state law simply because the products contain hemp. On the other end of the spectrum, on November 20, 2018, Alabama's Attorney General released guidance reiterating that it is a felony under state law to distribute or sell marijuana and that Alabama defines “marijuana” to include the extract CBD, unless in the form of FDA-approved prescription drug Epidiolex.

We urge you to consult local counsel should you have any questions about the legality of a specific product.