

Legality of Retail Cannabidiol (CBD) Products under Federal Law

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Issue

What is the status of retail cannabidiol (CBD) products under federal law?

(This report does not address federal Food and Drug Administration (FDA) [approved](#) CBD-based treatments (currently, the only one is Epidiolex).)

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be construed as one.

Summary

The Agriculture Improvement Act of 2018 removed hemp — defined as cannabis and cannabis derivatives with low concentrations of THC (no more than 0.3% on a dry weight basis) — from the definition of marijuana in the federal Controlled Substances Act, thus legalizing agricultural hemp production, including the production of hemp-derived CBD (Pub. L. 115-334, “2018 Farm Bill”).

While food products and dietary supplements containing CBD are widely available, it is currently illegal under the federal Food, Drug, and Cosmetic Act (FD&C Act) to introduce CBD into the

***Cannabinoid:** Cannabinoids are the naturally-occurring, biologically active, chemical constituents in hemp and marijuana, both of which are varieties of cannabis. Examples include CBD, THC, and cannabitol.*

***CBD:** cannabidiol (“CBD”) is a cannabinoid that is chemically similar to THC, but does not have the same psychoactive effects. One CBD-based medication has federal approval for seizure treatment. Researchers continue to investigate whether CBD may also help individuals manage anxiety, insomnia, and chronic pain.*

***THC:** delta-9-tetrahydrocannabinol (“THC”) is a cannabinoid that is responsible for producing psychoactive effects.*

interstate commerce food supply or market it as a dietary supplement, regardless of whether the CBD is hemp-derived. Cosmetics generally may contain CBD.

Below we answer certain questions on the status of several CBD products under federal law, using [an analysis](#) provided by the FDA.

FAQ on Retail CBD Products

Can one sell food to which hemp-derived CBD has been added?

No, food that will be introduced into interstate commerce cannot contain CBD. With certain exceptions, the FD&C Act prohibits adding to [food](#), until the FDA issues authorizing regulations, any substance that is:

1. an active ingredient in a drug product that has been approved by the FDA under specified provisions, or
2. a drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public.

CBD is the active ingredient in the FDA-approved drug product Epidiolex. Additionally, according to the FDA, the existence of substantial clinical investigations regarding CBD has been made public. Because CBD falls within the prohibition outlined above, it cannot be added to food until the FDA issues regulations approving its use in food. (The FDA concluded that no exception to the prohibition applies to CBD.)

Can one sell dietary supplements to which hemp-derived CBD has been added?

No, dietary supplements cannot contain CBD. Generally, [dietary supplements](#) are products that contain one or more vitamins; minerals; herbs or botanicals; amino acids; substances used to supplement human diets; or a concentrate, metabolite, constituent, extract, or combination of these substances. Dietary supplements are distinct from drug products. (A product is a drug if it is intended to affect the structure or function of the body or diagnose, cure, mitigate, treat, or prevent disease.)

Under the FD&C Act, with certain exceptions, a product containing a substance that meets either or both of the following criteria cannot qualify as a dietary supplement:

1. an active ingredient in a drug product that has been approved by the FDA under specified provisions, or

2. a drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public.

As noted above, CBD is the active ingredient in Epidiolex and the existence of substantial clinical investigations regarding CBD has been made public. Thus, the FD&C Act prohibits dietary supplements from containing CBD, unless an exception applies (which the FDA determined does not). Dietary supplements containing CBD are prohibited until the FDA opts to issue regulations deeming such products lawful dietary supplements.

Can one sell cosmetics to which hemp-derived CBD has been added?

Yes, as the FDA has neither prohibited nor restricted CBD use in cosmetics. [Cosmetics](#) are:

1. articles, excluding soap, intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
2. articles intended for use as a component in any of the above.

(A product is a drug, not a cosmetic, if it is intended to have a therapeutic use, as mentioned above.) Cosmetic products are generally not subject to FDA premarket approval. While regulations prohibit or restrict certain cosmetic ingredients, CBD is neither prohibited nor restricted. However, CBD, like any cosmetic ingredient, cannot be added to a cosmetic if it is rendered dangerous when used under customary conditions.

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