



TOWN OF RAYNHAM

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Notice Regarding CBD Containing Products for Retailers

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Recently, the Board of Health has received many inquiries as to whether CBD products can be sold in Raynham. CBD, or cannabidiol, is one of the two most prominent molecules found in the cannabis plant, however, unlike the other more well-known cannabinoid, THC (tetrahydrocannabinol), CBD does not have any psychoactive properties. It is this department's understanding that in Massachusetts, CBD containing more than 0.3 percent THC is considered cannabis and is regulated by the state's Cannabis Control Commission. In Massachusetts, the Department of Agricultural Resources (MDAR) has jurisdiction over hemp. MDAR has recently issued a policy for commercial growing, processing, and selling of industrial hemp, under which any grower or processor of industrial hemp is required to obtain licenses from the state.

The Massachusetts Department of Public Health is responsible for regulating food safety in the Commonwealth. DPH has also recently issued a policy prohibiting the manufacture or sale of any food or other consumable products containing CBD. The following are lists of approved and not approved products.

Hemp-derived products approved for sale in the Commonwealth pursuant to M.G.L. c. 128, Section 117(c) and under FDA and DPH guidance:

- Hemp seed
- Hemp seed oil
- Hulled hemp
- Hemp seed powder
- Hemp protein
- Clothing
- Building material
- Items made from hemp fiber
- Flower/plant from a Massachusetts licensed Grower to a Massachusetts licensed Grower or Processor

Hemp products that are NOT approved for sale in the Commonwealth pursuant to M.G.L. c. 128, Section 117(c) and are likewise prohibited for sale under FDA and DPH guidance:

- Any food product containing CBD;
- Any product containing CBD derived from hemp that makes therapeutic/medicinal claims;
- Any product that contains hemp as dietary supplement;
- Animal feed that contains any hemp products;
- Unprocessed or raw plant material, including the flower that is meant for end use by a consumer.

The MDAR will provide compliance assistance to individuals licensed pursuant to M. G. L. c. 128 who are interested in engaging in the sale of any hemp-derived products. However, it is the responsibility of any person involved with the sale of hemp-derived products to review and understand M.G.L. c. 128, Sections 116 through 123 and this Policy. Failure to comply may result in enforcement action from MDAR, DPH, the Raynham Board of Health, or law enforcement. This may include the inability to sell any hemp-derived products in the future, the destruction or seizure of illegal products, loss of license, or further legal action to determine whether the product sold is in compliance.

The Board of Health also reminds retailers of the Raynham by-law 2/43 (Synthetic Drugs). It is the responsibility of the retailer to ensure that products being sold do not violate this by-law or any other applicable laws. As such, this department recommends that laboratory data / information sheets for each product being sold be kept on file and on location showing the exact components / cannabinoids present, place of origin, and intended use of each product. The Board of Health also reminds retailers that they must conform to any and all additional federal, state, and local regulations should additional restrictions and/or regulations be implemented in the future.

Thank you for your anticipated cooperation. Please do not hesitate to reach out to the Board of Health should you have any questions.

Regards,


Matthew Tanis, REHS/RS
Health Agent

CBD (Cannabidiol) in Food Manufactured or Sold in Massachusetts

If I have a Massachusetts license or permit under 105 CMR 500 (Regulations for Good Manufacturing Practices for Food) to manufacture food, is it legal to add cannabidiol (CBD) to that food?

No. The Massachusetts Department of Public Health (DPH) regulates food manufacturing in the Commonwealth (see [105 CMR 500](#)). These regulations require that all food must be from approved sources that comply with federal, state, and local law and must not contain any prohibited ingredients. The [FDA has concluded](#) that federal law prohibits the addition of CBD to food products because CBD is an active ingredient in FDA-approved drugs. Since CBD is not an approved ingredient under federal law, it may not be added to manufactured foods.

If I have a Massachusetts permit under 105 CMR 590 (Minimum Sanitation Standards for Food Establishments) as a food establishment, is it legal to add CBD to food I distribute at retail?

No. The DPH sets minimum sanitary standards for food establishments in the Commonwealth. These regulations are enforced by local boards of health in partnership with the state (see [105 CMR 590](#)). The regulations incorporate the FDA's Food Code, which requires that food be obtained from sources that comply with federal, state, and local laws and must not contain any prohibited ingredients. As noted above, the [FDA has concluded](#) that federal law prohibits the addition of CBD to food products because CBD is an active ingredient in FDA-approved drugs. Since CBD is not an approved ingredient under federal law, it may not be added to foods distributed at retail.

If I am licensed or permitted as a food manufacturer or retailer in Massachusetts, is

it legal to add hulled hemp seeds, hemp seed protein, and/or hemp seed oil to food I manufacture and/or sell at retail?

Yes. The [FDA has completed](#) its evaluation of generally recognized as safe (GRAS) notices for hulled hemp seeds, hemp seed protein and hemp seed oil. These products can be legally added to human food, provided they comply with all other requirements.

I have a license issued by the Massachusetts Department of Agricultural Resources (MDAR) under its Interim Commercial Industrial Hemp Program Policy. Is it legal for me to add CBD to manufactured or retail food?

No. The [MDAR Hemp Program](#) does not provide an exception to the federal prohibition against adding CBD into food products.

May I market my hemp products (e.g., hulled hemp seeds, hemp seed protein and hemp seed oil) by making therapeutic claims without FDA approval?

No. The [FDA has reiterated](#) that cannabis products (hemp-derived or otherwise) that are marketed with claims of therapeutic benefit or any other disease claim must be approved by the FDA.

May I sell cosmetic products containing hemp or CBD at retail in Massachusetts?

DPH does not regulate cosmetics. The [FDA has issued Frequently Asked Questions](#) that address cannabis and cannabis-derived ingredients in cosmetics.

What can I do if I had an adverse reaction to a cosmetic product labeled as containing CBD?

You can report a cosmetic related complaint [directly to the FDA](#).

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



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POLICY STATEMENT REGARDING THE SALE OF HEMP-DERIVED PRODUCTS IN THE COMMONWEALTH

This document sets forth the Massachusetts Department of Agricultural Resources ("Department") Policy Statement on the Sale of Hemp-Derived Products in the Commonwealth ("Policy"). This Policy provides notice of categories of hemp-derived products that are approved for sale in the Commonwealth and identifies products that are prohibited for sale. This Policy also provides information on how a person or entity may become licensed to sell as required by M.G.L. c. 128, Section 118. All proposed activities related to the sale of hemp-derived products must comply with this Policy in order to be considered in compliance with M.G.L. c. 128, Section 118.

Please note that this Policy applies only to hemp and hemp-derived products. All activities related to marijuana or the sale of any product containing marijuana are under the jurisdiction of the Cannabis Control Commission or law enforcement.

CONTROLLING LAW

The cultivation, processing, and sale of hemp in the Commonwealth of Massachusetts are regulated by both federal and state law.

With the passing of the Agricultural Improvement Act of 2018, referred to as the "2018 Farm Bill," signed on December 20, 2018, federal law now treats hemp as an agricultural commodity. Previously, hemp was not distinguished from marijuana under federal law, except under limited circumstances. Effective with this change in law, hemp is now legally recognized as a separate crop, the cultivation of which falls under the jurisdiction of the United States Department of Agriculture ("USDA") and state departments of agriculture, if approved by USDA. Additionally, the United States Food and Drug Administration ("FDA") retained its jurisdiction to address public health requirements for hemp-derived products under the Federal Food, Drug, and Cosmetic Act ("FFDCA") and other related laws.

The FDA has recently issued a statement that limits the types of cannabis-derived (including hemp-derived) products that may be manufactured and sold to consumers. In particular, the FDA has prohibited any food or other consumable products containing the cannabinoid known as "CBD" from interstate commerce without its approval.¹

Under state law, Sections 116 through 123 of Massachusetts General Laws Chapter 128 assign the Department responsibility to regulate all activities related to hemp and industrial hemp within the Commonwealth of Massachusetts. The law directs the Department to administer a licensing and registration program for the cultivation, processing, and sale of hemp and industrial hemp in the Commonwealth. More particularly, the law assigns the Department general oversight responsibility for approving the sale of hemp-derived products for

¹ See <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-steps-advance-agencys-continued-evaluation>.

commercial purposes within the Commonwealth. The Department's regulation of hemp-derived products is separate and in addition to controlling federal law, including FDA directives.

The Massachusetts Department of Public Health ("DPH") is responsible for regulating food safety in the Commonwealth. DPH has recently issued policy guidance that is consistent with the FDA policy in prohibiting the manufacture or sale of any food or other consumable products containing CBD.² Under the state health and sanitary code, local boards of health have authority to enforce public health laws and regulations within a municipality.

SALE OF HEMP-DERIVED PRODUCTS

Under M.G.L. c. 128, Section 118, a license is required to "sell" industrial hemp (i.e. the products made from hemp). MDAR construes the term "sell" or "sale" of hemp to include the following sale transactions:

- Massachusetts Licensed Grower to Massachusetts Licensed Grower
- Massachusetts Licensed Grower to Massachusetts Licensed Processor
- Massachusetts Licensed Processor to Massachusetts retail facility (store)

Effective immediately, a person or entity that proposes to engage in the activities listed above shall be deemed licensed under M.G.L. c. 128, Section 118, provided that the person or entity is selling the hemp-derived products that are allowed under this Policy and is otherwise licensed as a Grower or Processor and in good standing with the Department. Such products are also deemed approved commercial uses under M.G.L. c. 128, Section 117(c). No further action or approval by the Department will be needed.

All persons or entities proposing to sell hemp-derived products in the Commonwealth are also responsible for complying with all applicable federal and state laws and regulations, including any regulations or guidance issued by the FDA, DPH, or local boards of health. Applicable laws and regulations are as follows:

- Products for sale must be in compliance with the FDCA, as amended, and Section 351 of the Public Health Service Act.
- Products must be in compliance with applicable DPH guidance.
- Products must be allowed for sale under this Policy and, as such, be deemed to be approved commercial uses pursuant to M.G.L. c. 128, Section 117(c).

APPROVED HEMP-DERIVED PRODUCTS

The following hemp-derived products are approved for sale in the Commonwealth pursuant to M.G.L. c. 128, Section 117(c) and under FDA and DPH guidance:

- Hemp seed
- Hemp seed oil
- Hulled hemp
- Hemp seed powder
- Hemp protein
- Clothing
- Building material
- Items made from hemp fiber
- Flower/plant from a Massachusetts licensed Grower to a Massachusetts licensed Grower or Processor

² See: <https://www.mass.gov/info-details/cbd-in-food-manufactured-or-sold-in-massachusetts>

HEMP PRODUCTS NOT APPROVED FOR SALE

The following products are **NOT** approved for sale in the Commonwealth pursuant to M.G.L. c. 128, Section 117(c) and are likewise prohibited for sale under FDA and DPH guidance:

- Any food product containing CBD;
- Any product containing CBD derived from hemp that makes therapeutic/medicinal claims;
- Any product that contains hemp as dietary supplement;
- Animal feed that contains any hemp products;³
- Unprocessed or raw plant material, including the flower that is meant for end use by a consumer.

The Department will provide compliance assistance to individuals licensed pursuant to M. G. L. c. 128 who are interested in engaging in the sale of any hemp-derived products. However, it is the responsibility of any person involved with the sale of hemp-derived products to review and understand M.G.L. c. 128, Sections 116 through 123 and this Policy.

Failure to comply may result in enforcement action from the Department, DPH, the local board of health, or law enforcement. This may include the inability to sell any hemp-derived products in the future, the destruction or seizure of illegal products, loss of license, or further legal action to determine whether the product sold is in compliance.

³ See https://www.aafco.org/Portals/0/SiteContent/Announcements/Guidelines_on_Hemp_in_Animal_Food_May_1_2019.pdf.