

CBD-Infused Foods Remain a Patchwork of State and Local Laws

By Elizabeth Tansing, Sr. Director; State Affairs, Food Marketing Institute

State CBD laws are joining the likes of plastic bag and minimum wage bills as a patchwork of differing state and local laws floods the country. But what's different with the issue of CBD – Cannabidiol – is whether a state or locality is willing to defy federal law.

Currently, CBD can be found in the marketplace as ingredients in such items as lotions, liquid drops, drinks, candies and food. CBD is made from industrial hemp, a strain of the *Cannabis sativa* plant species, and contains 0.3 percent or less of the psychoactive compound THC, which is found in marijuana.

The 2018 Farm Bill allows for the production and commercialization of hemp and hemp-derivatives such as CBD. As a result, it was widely reported that the new law “legalized” CBD, and some states viewed the development as a green light to begin approving the sale of CBD-infused food products. However, the Farm Bill also explicitly preserves FDA's authority over the use of such ingredients in FDA-regulated products, such as food. In fact, FDA has specifically [stated](#) that it is a prohibited act to introduce into interstate commerce any food, including animal food or feed, to which CBD has been added.

While thirty-three states and the District of Columbia have passed laws broadly legalizing marijuana in some form, eleven states – Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington – have adopted recreational use laws. What's different among these eleven states and others is how they've addressed CBD-infused food.

Colorado and Maine recently amended their food and drug laws to say that food containing CBD is not adulterated and therefore is permitted for sale.

Alternatively, California's Department of Public Health last summer issued [guidance](#) on CBD in foods. California stated in its guidance that unless FDA changes its position, or data is presented to the state of California

changing its position, it doesn't view it to be a lawful food or dietary ingredient, although it should be pointed out that California allows the sale of non-food items like CBD-infused lotions. Also, the state allows the manufacturing and sale of cannabis products, which also includes edibles.

Los Angeles County, California recently announced enforcement action against any retailers or restaurants selling CBD-infused food products. There is legislation pending – [AB 228](#) – in California that would allow CBD in food.

Massachusetts, Michigan and Ohio do not allow for the sale of CBD in food. In fact, Ohio's Department of Agriculture has been cracking down on sellers of CBD products.

In Texas, the Department of State Health Services removed hemp from its list of dangerous drugs, but those who sell CBD over the counter, or buy it, can still be prosecuted under a separate statute that says all cannabis-derived products are illegal.

There is conflicting information in New York, where medical marijuana is legal. Officials at the NY Agriculture Department issued guidance last December saying it was legal to sell "CBD tea," "chocolates with CBD drizzle" and other CBD edibles, if the products are made and marketed as dietary supplements.

But the New York City Dept of Health sent out a Tweet stating that as of July 1, city health inspectors are embargoing all food and drinks for sale containing CBD and that the NYC Health Code [prohibits](#) adding CBD to food or drink, including in packaged food products. Embargoed food and drink must be discarded or returned to the supplier.

There is no doubt that states and localities will continue to determine on their own, or in agreement with FDA, policy surrounding CBD-infused food. So what is FMI doing on this issue? FDA recently held a public meeting on CBD and established an internal working group to consider a regulatory pathway forward not only for food and beverage products, but also for topical products, dietary supplements and food for animals. FMI provided

[oral testimony during the FDA meeting](#), and we also provided similar [oral testimony to USDA](#) as the Department moves forward with its regulation of hemp.

FMI is also assisting our member companies in navigating this complex landscape, through legal memos from FMI's outside counsel, webinars and in-person sessions at recent and upcoming FMI events, such as the FMI State Issues [Retreat](#), slated for August. Additionally, FMI has launched a [CBD resources webpage](#) to provide a place for members to easily access information on this topic, including the following materials:

- [FMI CBD Resources Page](#)
- [Legal Memo: Implications of 2018 Farm Bill Hemp Reforms for Regulatory Oversight of Hemp-Derived Products Including CBD](#)
- [Legal Memo: FDA's Public Meeting](#) (June 4, 2019)
- [FMI Webinar: An Overview of the Regulatory Landscape for Hemp-Derived Products Including CBD](#)

As the policy landscape continues to change, FMI will be available to report on and assist our membership on CBD issues.