

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.