

LAWS GOVERNING the SALE of HEMP-DERIVED PRODUCTS INCLUDING CBD

1. **2018 Farm Bill (7 USC Ch. 38, Subsection VII, §1639 o-s):** Federal law treats hemp as a legal agricultural crop. As such, hemp falls under the jurisdiction of the United States Department of Agriculture (USDA) and the Massachusetts Department of Agricultural Resources (MDAR). In addition, the Food and Drug Administration (FDA) has jurisdiction to address public health requirements for hemp-derived products pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).
 - a. The FDA, through the FFDCA, prohibits any food or other consumable product containing cannabinoid (CBD, a hemp-derived product) from interstate commerce. This means that these products cannot move between states.
2. **Massachusetts General Law Chapter 128, Sections 116 – 123:** The Massachusetts Department of Agricultural Resources (MDAR) regulate all activities related to hemp and hemp-derived products like CBD.
3. **The Massachusetts Department of Public Health (DPH):** While DPH does not regulate hemp or hemp-derived products, DPH does regulate food safety. DPH has issued policy guidance consistent with FDA policy guidance that prohibits the sale of any food or other consumable product that contains CBD. MDAR states in its “Policy Statement Regarding the Sale of Hemp-Derived Products in the Commonwealth” that local boards of health have the authority to enforce these types of public health regulations pursuant to the sanitary code. <https://www.mass.gov/policy-statement/sale-of-hemp-derived-products-in-the-commonwealth>.
4. **Regulation of growers, manufacturers, and processors:** MDAR requires licenses and testing for growers, manufacturers, and processors, but not retailers. MDAR will test and inspect a grower’s final crop to certify that it contains less than .3% THC. A processor must only process product licensed by MDAR or the USDA under a USDA-approved plan for product from out of state. A manufacturer or processor selling the product must retain records including the date of receipt, the manufacturer name, license number and address, the cannabinoid profile, and the batch number. This information must be contained on the label, as well as a statement that says, *“This product derived from Hemp has not been tested, analyzed, or approved by the Massachusetts Department of Agricultural Resources or the FDA.”*¹
5. **Hemp and hemp-derived products that can be sold in MA retail stores:** MDAR does not require a license to sell these products in a retail store, nor does MDAR regulate the retail market. <https://www.mass.gov/info-details/faqs-sale-of-hemp-derived-products-in-the-commonwealth>. However, MDAR does indicate those products approved for sale and not approved for sale.

¹ In Massachusetts, the hemp grower must secure certification from MDAR that the hemp product itself contains less than .3% THC.

a. Products that can be sold at retail:

- i. Hemp seed
- ii. Hemp seed oil
- iii. Hemp seed powder
- iv. Hemp protein
- v. Hemp clothing
- vi. Hemp building material
- vii. Items made from hemp fiber
- viii. Non-food CBD products for human consumption
 - 1. As long as they do not make any medicinal/therapeutic claims on the label and are not marketed as a dietary supplement, unless approved by the FDA.
- ix. Hemp flower or plant from a licensed Massachusetts Grower to a Massachusetts licensed Grower or Processor.
- x. Hemp flowers cannot be sold in retail stores.

b. Products that cannot be sold at retail:

- i. Any food product containing CBD;
- ii. Any product containing CBD that makes medicinal or therapeutic claims;
- iii. Any product that contains hemp as a dietary supplement;
- iv. Animal feed containing hemp;
- v. Unprocessed or raw plant material, including flower.

6. Enforcement: MDAR sets requirements for growers, manufacturers, and processors.² However, MDAR does not license the retail sale of hemp-derived products and specifically states that “the Department does not regulate the retail market.”³ As indicated above, MDAR states in its “Policy Statement Regarding the Sale of Hemp-Derived Products in the Commonwealth” that local boards of health have the authority to enforce these types of public health regulations pursuant to the sanitary code. <https://www.mass.gov/policy-statement/sale-of-hemp-derived-products-in-the-commonwealth>.

7. Local enforcement strategies: In addition to utilizing the sanitary code, local boards of health have the option of enacting local regulations addressing hemp-derived products. These regulations could include the following, and a sample template is available at www.mahb.org:

- a. Require a local permit;
- b. Age-restrict the products;
- c. Prohibit vending machine sales;
- d. Prohibit self-service displays;
- e. Prohibit edible products;
- f. Incorporate the requirements for manufacturers and processors relative to retail sales as described above.

Prior to enacting any regulation, local boards of health should consider whether there are sufficient resources available to enforce it. Another option would be to report a retail store that is selling an illegal product as listed above to MDAR’s Industrial Hemp Program at (413)548-1901.

² <https://www.mass.gov/doc/2018-ma-hemp-program-policy/download>

³ <https://www.mass.gov/info-details/faqs-sale-of-hemp-derived-products-in-the-commonwealth>.

This information is provided for educational purposes only and is not to be construed as legal advice.