



Department of Public Health and Human Services

Public Health & Safety Division ♦ Communicable Disease Control & Prevention Bureau
Food & Consumer Safety ♦ PO Box 202951 ♦ 1400 Broadway ♦ Helena, MT 59620-2951
Phone: (406) 444-2837 ♦ Fax: (406) 444-5055

Rev. 01.08.21

Industrial Hemp and Cannabidiol Policy for Food and Dietary Supplements

Page 1 of 3

PURPOSE

The purpose of this policy is to address numerous inquiries from entrepreneurs who want to add industrial hemp ingredients or cannabidiol (CBD) to food and dietary supplements.

SUMMARY

Allowed in food and dietary supplements

Industrial hulled hemp seeds and oil from these seeds from an approved source will be allowed into food and dietary supplements, if used in accordance with official departmental policy. The official policy is detailed in the “ALLOWED” portion of this document.

Unallowed in food and dietary supplements

Added CBD, THC (delta-9 tetrahydrocannabinol) or other extract from any *Cannabis* plant source is not allowed in food or dietary supplements.

BACKGROUND

The Montana Department of Public Health and Human Services (DPHHS) and FDA have determined that verifiable foodgrade industrial hulled hemp seeds and oil from such seeds will be allowed in food, including dietary supplements, if and only if, the food product is marketed without any and all health and health-related claims, and used in specific types of food categories detailed in the “ALLOWED” portion of the “Policy” section in this document.

Despite popular belief, CBD is not allowed in regular food or dietary supplements. CBD is already regulated as a prescription drug and pharmaceutical ingredient. DPHHS does not allow the addition of either prescription drugs or over-the-counter drugs into food or dietary supplements. Specifically, CBD does not meet the legal definition of an ingredient allowed in conventional food or dietary supplements because CBD is already regulated as a prescription drug and pharmaceutical ingredient. CBD advocates who wish for the substance to be allowed as an ingredient in conventional food or as a component or ingredient in dietary supplements are encouraged to petition FDA under their GRAS (Generally Recognized as Safe) Notice Petition program for consideration.

There is no state or federal law that allows the introduction of CBD into commerce as food or dietary supplement. Moreover, DPHHS believes that CBD extracts as edible products is best administered either under the FDA’s existing drug approval program, and not allowed into the conventional food or dietary supplement supply chain. Consumers are entitled to make informed choices about edible products in commerce and that information is best provided to consumers by participants in the aforementioned programs.

Montana food standards correspond with federal food standards to facilitate interstate, intrastate and international commerce, adopted under state rule 37.110.101 (1)(a)-(bm), ARM. Subsections (aw) and (bi) of that rule specify substances and additives that are allowed in foods and dietary supplements. CBD is not included in these regulations, nor should it be any more than aspirin or ibuprofen. Conventional foods and dietary supplements must not contain either over-the-counter drugs or prescription drugs to better ensure consumer safety and education.

This history is well detailed in public records that document the evolution of food safety laws on the federal and state levels, dating back to 1906 and 1911, respectively, when the national and Montana versions of the Pure Food and Drug Act became law. Prior to this time, it was not uncommon to have edible products contain ingredients such as morphine, opium, cocaine, heroin, chloroform, cannabis and other risky substances in foods and medicines. In fact, these substances are specifically named in Section 8 of the 1911 Montana food and drug law.

According to scientific publications from the National Institutes of Health, CBD has drug properties, and has been scientifically shown to have analgesic, anticonvulsant, muscle relaxant, anxiolytic, neuroprotective, antioxidant, and anti-psychotic activity. Also, the federal Food and Drug Administration (FDA) considers nearly all CBD products unapproved drugs. On June 25, 2018, FDA announced approval of CBD as the active ingredient in a drug to treat two rare and severe forms of epilepsy. Therefore, CBD does not meet the legal definition of a dietary supplement, nor is it an approved food additive or generally recognized as safe (GRAS) for use in regular food.

Dietary supplements are special types of food in which stricter production controls have been mandated because not all ingredients are required to be approved additives, generally recognized as safe, or conventional food ingredients. Active or primary ingredients in dietary supplements have known physical effects on the body beyond ordinary growth and maintenance of healthy bodily functions—some of which may be new to the United States. Their active ingredient inclusion into regular food would diminish certainty that their use in regular food would not be harmful under intended, common or usual conditions. In these situations, ingredients outside what is normally allowed in regular food are regulated as either dietary supplements or possibly new drugs.

Industrial hemp is legally defined in Montana law under the Alternative Agricultural Crops Act, which states that industrial hemp “means all parts and varieties of the plant *Cannabis sativa* L. containing no greater than 0.3% tetrahydrocannabinol” for the dry weight of the crop. The term is also defined in federal law in Section 7606 (b)(2) of the Agricultural Act of 2014, commonly known as the “Farm Bill” (Public Law 113-79). There is a perception in the public realm that passage of the Farm Bill means all *Cannabis* and hemp-related products are now legal throughout the United States and this is simply not the case for sound reasons.

On December 20, 2018, FDA posted a “Constituent Update,” which indicates specific conditions in which industrial hulled hemp seeds and industrial hemp seed oil may be used in conventional foods. The conditions are described within Generally Recognized as Safe (GRAS) petition notices 765, 771 and 778. In response to these notices, FDA did not write any objections to the petitioner’s usage conditions, but also did not grant GRAS status to hulled hemp seeds. Specifically, FDA stated industrial hulled hemp seeds and industrial hemp seed oil may be used in food by adding them as a source of carbohydrates, nutrients, protein, and oil to baked goods, beverages (dairy alternative products, juices, protein drinks, smoothies), cereals, desserts, dips, dressings, meat alternative products, nutrition bars, sauces, snacks, spreads, and soups. FDA also indicated that only “trace amounts” of THC and CBD may be in the hulled seeds, which might possibly be acquired through inadvertent or perhaps intentional cross-contact activities with other parts of the plant or equipment during processing and packaging.

Prospective operators who want to use industrial hemp seeds and oil from such seeds in food or dietary supplements outside the scope detailed FDA GRAS notice petitions 765, 771 and 778, are encouraged to submit their own GRAS petition notice to FDA for consideration.

FDA concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce, any food, including any animal food or feed, to which THC or CBD has been added, regardless of the source. Therefore, use of industrial hemp as the source of THC or CBD to be added to food products is prohibited. Stated differently, until the FDA and DEA rules that industrial hemp-derived CBD oil and CBD products can be used as food, CBD products are not an approved food, food ingredient, food additive, or dietary supplement.

Policy

Food operators need to prove the applicable provisions below are being complied with during the pre-licensing and post-licensing inspection processes regarding approved food ingredient sourcing and non-adulteration status:

1. **SOURCE.** Source and non-adulteration status can be verified by providing the inspecting sanitarian with written documents that show the origin of the industrial hemp is from a verifiable and legal source. Participation in legally allowed industrial hemp program would aid in this verification step. The Montana Department of Agriculture is one example of an agency that operates a legally allowed industrial hemp program. If a food operator can prove they are a participant in such a program, this would provide a firm foundation upon which to conclude the foodgrade industrial hemp seed and industrial hemp seed oil is from an approved source.
2. **ALLOWED.** Verifiable foodgrade industrial hemp seeds and industrial hemp seed oil will be allowed in food and dietary supplements, if and only if, the food is marketed without any and all health and health-related claims. If health or health-related claims are made for such products, the product in question will be regulated as an unapproved drug, rather than food. Conditions in which industrial hulled hemp seeds and industrial hemp seed oil may be used are adding them as source of carbohydrates, nutrients, protein, and oil to: baked goods, beverages (dairy alternative products, juices, protein drinks, smoothies), cereals, desserts, dips, dressings, meat alternative products, nutrition bars, sauces, snacks, spreads and soups.
3. **UNALLOWED.** Hemp-related ingredients that will not be allowed in food:
 - a. Any and all CBD products derived from Cannabis plants; and
 - b. Any and all CBD products, including CBD oil, derived from industrial hemp; and
 - c. Hemp oil that is not derived from industrial hemp seeds; and
 - d. Industrial hemp seed oil with added CBD or other cannabinoids.
4. **PREPACKAGED CBD PRODUCTS.** Prepackaged CBD products manufactured outside Montana that are already in commerce:
 - a. CBD products marketed not as food and do not make any health or health-related claims, should not be considered a workload obligation for the local health authority for possible enforcement action;
 - b. CBD products marketed as food and make any health or health-related claims, should be considered a workload obligation for the local health authority for enforcement actions under the Montana Food, Drug and Cosmetic Act. Local health authorities are encouraged to work with their local law enforcement authorities and county attorney to decide whether to create and implement an enforcement plan.
5. **MANUFACTURED CBD PRODUCTS.** Operators who propose to manufacture CBD products within Montana should be referred to:

FDA Ombudsman, Virginia Behr
Telephone: 301-796-3436
FDA Assistant Ombudsman, Melissa Sage
Telephone: 301-796-6449
E-mail: CDERombudsman@fda.hhs.gov
Web page: [CDER Ombudsman](#)
6. **ENFORCEMENT.** If there is probable cause to believe a food or dietary supplement in commerce, or is intended for introduction into commerce, may contain suspected illegal levels of THC or CBD, the sanitarian or authorized agent should contact their supervisor to decide whether to procure a sample for testing under provisions allowed under the Montana Food, Drug and Cosmetic Act. Local health authorities are encouraged to work with their local law enforcement authorities and county attorney to decide whether to create and implement an enforcement plan.

END OF DOCUMENT