

FDA Grants Limited Enforcement Discretion for CBD in Dietary Supplements

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On April 1, 2026, the U.S. Food and Drug Administration (FDA) announced a new enforcement discretion policy for orally administered, hemp-derived cannabidiol (CBD) products that meet certain criteria.¹ However, food and dietary supplement companies should not make any changes with regard to CBD-containing products (or contemplated plans relating to the same) based on this new policy, as it only applies to products provided to Medicare patients at the direction of a treating physician. See below for more detail on the policy and its eligibility criteria.

Some Hemp-Derived Cannabinoids Are No Longer Defined as Controlled Substances.

Different varieties of the flowering plant, *Cannabis sativa* L., make up what is commonly known as marijuana. But, although marijuana is regulated as a controlled substance under the federal Controlled Substances Act (CSA), “hemp” that meets the following definition has been excluded from marijuana under the CSA since the Agriculture Improvement Act of 2018 (the “2018 Farm Bill”) took effect in December 2018.²

Under the 2018 Farm Bill, “hemp” is any part of the *Cannabis sativa* L. plant, including its seeds and derivatives, whether growing or not, “with a delta-9 [THC] concentration of not more than 0.3 percent on a dry weight basis.”³ The recently enacted Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act of 2026 further narrowed the definition of “hemp” to exclude:⁴

- Cannabinoids not capable of being naturally produced in the *Cannabis sativa* L. plant;
- Cannabinoids that are capable of being naturally produced in the *Cannabis sativa* L. plant but were instead synthesized or manufactured outside the plant; and
- Cannabinoids that produce, or are marketed to produce, similar effects as THC.

Recent Executive Action Also Seeks to Improve Access to Hemp-Derived CBD Products.

The Executive Office of the President’s recent directive to the FDA, Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS) and the National Institutes of Health (NIH) to research ways to improve patient access to hemp-derived cannabinoid products for medicinal purposes also played a role in the FDA’s decision to exercise limited enforcement discretion.⁵ CMS has since established a Substance Access Beneficiary Engagement Incentive (BEI) to allow participating organizations to offer up to \$500 per year of hemp products to eligible Medicare beneficiaries.⁶

Hemp-Derived Products Must Meet Four Criteria to Qualify for Enforcement Discretion.

Whether the FDA applies enforcement discretion to hemp-derived, consumable CBD products depends on the type of product. To qualify, such CBD products must satisfy the following criteria.

Note that the fourth bullet makes the scope of this policy much narrower than Industry may have hoped.

- Product is manufactured, marketed and labeled in a manner consistent with the dietary supplement framework, such as including a supplement facts panel and structure/function claims.
- Product is not contaminated.
- Product is not packaged or labeled in a manner that would be attractive to or marketed to children.
- Product is provided to a beneficiary through a program of medical items or services payable under Title XVIII of the Social Security Act, under the direction of the patient's treating physician, in a manner ancillary to the covered items or services furnished under such program.

Even if a CBD product is not eligible for enforcement discretion because it does not meet the fourth criterion above, it is generally advisable to meet the first three criteria, as doing so reduces the risk of enforcement and/or liability. As a practical matter, without regard to the newly announced enforcement discretion policy, the risk of FDA enforcement for CBD-containing food or dietary supplement products likely remains low, unless they are labeled or marketed with therapeutic (i.e., "disease") claims.

¹ Letter from Martin A. Makary, MD, MPH, Commissioner of Food and Drugs, U.S. Food and Drug Admin., to Kyle Diamantas, JD, Deputy Commissioner for Human Foods and Dr. Tracy Beth Hoeg, MD, PhD, Acting Director for the Center for Drug Evaluation and Research, Hemp-derived Cannabidiol Products in Medical Research Models (Apr. 1, 2026), <https://www.fda.gov/media/191782/download?attachment>.

² [Agriculture Improvement Act of 2018](#), Pub. L. No. 115-334 (Dec. 20, 2018) (citing 7 USC § 1639o).

³ 7 USC § 1639o(1).

⁴ [Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act](#), H.R. 5371, Pub. L. No. 119-37, 139 Stat. 559 (Nov. 12, 2025) (codified at 7 USC § 1639o(1)(C)(ii–iii)).

⁵ See supra, note 3.

⁶ Centers for Medicare & Medicaid Serv., [Substance Access Beneficiary Engagement Incentive](#) (Mar. 20, 2026).