

It's Still Gray: The 2018 Farm Bill and the Legality of CBD Under Federal Law

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President Trump recently signed the Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) and the cannabis industry quickly and widely celebrated passage as clearing the way to sell products containing cannabidiol (better known as CBD). But is it really? As one might expect, this lawyer's answer is that "it depends."

CBD has become known for its purported health benefits in relation to a wide range of conditions. CBD is currently available for purchase in various forms and product types online and over the counter, and retail CBD sales are projected to be as high as \$1.9 billion by 2020. Despite its proliferation in the U.S. market, most CBD sales to-date were made in violation of the Controlled Substances Act (CSA) and the federal Food, Drug, and Cosmetic Act (FD&C Act).

The 2018 Farm Bill has been widely regarded as the solution to this paradox, as its enactment, according to many stakeholders, signifies the nationwide legalization of all CBD-product sales under federal law. It is true that the 2018 Farm Bill legalizes hemp-derived CBD (with THC concentration below 0.3 percent) under a federal law (the CSA). While the 2018 Farm Bill is an important step in clarifying the legal status of CBD, the Act does not legalize *all* CBD under *all* federal laws. Important for the food and supplement industries—as well as retailers who find themselves caught in the crosshairs of what industry and consumers want and what state and federal regulators might enforce—the FDA's position is that the 2018 Farm Bill and its legalization of hemp does not impact the FD&C Act, under which the FDA continues to take the position that it is still illegal to market foods, beverages, or dietary supplements containing CBD.

Upon the President's signing of the Agriculture Improvement Act of 2018, FDA Commissioner Scott Gottlieb, M.D., promptly released a statement that reiterates the FDA's focus on enforcement against companies that illegally market products with cannabis-derived compounds that pose a significant risk to the public. But, notably, Commissioner Gottlieb's statement also spells out the agency's efforts to make available lawful pathways for marketers of these products and indicates the FDA's continued focus is on products that do not make unapproved drug claims.

To read the full alert click on the PDF linked below.

[The 2018 Farm Bill and the Legality of CBD.PDF](#)