

Now That Many States Have Legalized Hemp and/or Marijuana, How Can You Comply with Labeling and Packaging Requirements?

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For nearly the last 20 years, states have been legalizing hemp growth, production, and products.[1] While hemp remained illegal federally and was included in the definition of marijuana under the Controlled Substance Act, numerous states began exploring the validity of hemp as a viable product. Marijuana legislation was not far behind.

In 2014 and later 2018[2], **Congress enacted legislation to remove hemp from the definition of marijuana under the Controlled Substance Act**, remove federal funding for prosecution of “State Legal” participants[3], and is now considering numerous pieces of legislation that would further enable “State Legal” participants to function as normal businesses, including the SAFE Banking Act and the States Act.

These pieces of legislation do not cover regulatory compliance with packaging or labeling under either federal or state statutes or regulations. For example, hemp and marijuana products that are food or beverage additives, topicals, edibles, or animal food additives fall under current regulatory rules that require specific labeling and packaging. Federal regulatory bodies such as the FDA, pursuant to the Food, Drug and Cosmetic Act[4], as well as the TTB[5], have regulations mandating certain information, package types, and security of the label or package. In addition to the federal regulatory rules, many states have their own statutes or regulations which impact packaging and/or labeling. The state labeling and packaging requirements often fall under either the state’s own Food, Drug and Cosmetic Acts or regulations from the state departments of agriculture or other regulatory bodies regulating hemp and marijuana.

For example, in Oregon, OAR Chapter 603, Division 4, Section 2380 establishes requirements for labeling, storing, and securing pre-tested industrial hemp for human consumption or hemp items.[6] In 2018, Oregon issued a packaging and labeling guide for medical and recreational marijuana, which also refers to hemp labeling and packaging.[7] These regulations incorporate the National Institute of Standards and Technology standards on labeling and packaging.[8] Other states, like Pennsylvania, may not have issued regulations specific to packaging or labeling of hemp or marijuana, but they have adopted legislation that includes labeling and packaging requirements for food additives, topicals, edibles, and animal products generally.[9] Some states also have specific regulations for hemp seed or CBD products.[10]

As this area of law and regulation is frequently changing and this is only a fraction of information in this current regulatory environment, please contact your Dinsmore Hemp and Marijuana Group for questions on compliance with federal or state packaging and labeling statutes and regulations. We have recently compiled the federal and state regulations related to packaging and labeling for all 50 states and the District of Columbia for a Fortune 50 company.

[1] <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=JRS098&Session=2000>

[2] <https://www.govtrack.us/congress/bills/115/hr2>; Pursuant to the 2018 Farm Bill, “[t]he term ‘hemp’ means the plant [species] *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [“THC”] concentration of not more than .3 percent on a dry weight basis.”

[3] **SEC. 728.** “None of the funds made available by this Act or any other Act may be used—(1) in contravention of section 7606 of the Agricultural Act of 2014 ([7 U.S.C. 5940](#)); or(2) to prohibit the transportation, processing, sale, or use of industrial hemp, or seeds of such plant, that is grown or cultivated in accordance with subsection section 7606 of the Agricultural Act of 2014, within or outside the State in which the industrial hemp is grown or cultivated.” Consolidated Appropriations Act

2019; <https://www.congress.gov/bill/116th-congress/house-joint-resolution/31/titles?q=%7B%22search%22%3A%5B%22Marijuana%22%5D%7D&r=1&s=4>

[4] ***Food, Drug, and Cosmetic Act (21 U.S.C. § 343(q)(5)(H))***; <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-food-labeling-guide>.

[5] <https://www.fda.gov/media/90473/download>

[6] <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=258115>

[7] https://www.oregon.gov/olcc/marijuana/Documents/Packaging_Labeling/PackagingandLabelingGuide.pdf

[8] <https://www.nist.gov/sites/default/files/documents/pml/wmd/pubs/2016/02/25/iva-pkglblgreg-16-h130-final.pdf>

[9] <http://www.health.state.pa.us/pdf/ddc/ddcAct.pdf>

[10] https://www.agriculture.pa.gov/Plants_Land_Water/industrial_hemp/Pages/Labeling_Industrial_Hemp_Seed

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