

January 18, 2022

As I understand the thinking, CDPH has decided that there are two types of manufacturers: extractors and everyone else. I should have understood this better when Benson asked me our estimates of how many extractors we anticipate. I told him at the time that there is no such thing so I couldn't give him an answer.

You have determined that the FDA is ok with extractors but not those that use the extraction as an ingredient. As a result, you have decided to treat out-of-state extractors differently than all other out-of-state manufacturers. I now understand how you arrived at your conclusion.

However, notwithstanding the linear progression of your decision, it still contradicts the statute. As I told Benson a few weeks ago and Margaret on Friday, the law does not create a registration category called "extraction manufacturer." For the department to create something that the Legislature and the Governor did not authorize is not authorized. If the Legislature and the Governor had wanted the law to treat extractors differently, then the bill would have done that.

In fact, all manufacturers are subject to the same regulatory framework, and in fact, most manufacturers do extraction as well as product manufacturing. AB 45 anticipated that all manufacturers, in-state and out-of-state, would be registered. To be further clear, the singular definition of hemp manufacturer in the statute includes both an extractor and a product manufacturer. It does not create two separate definitions, and there is nothing in the statute that can be interpreted to allow one kind of manufacturer to be treated differently from another. The treatment of one type differently from another was never even a discussion point by the Legislature, and it was never a provision suggested or requested by the Governor.

I appreciate the department's interest in the FDA's perspective on issues like this. But let me remind you (as you noted in your own BCP), the FDA is not enforcing against companies that ship hemp CBD products across state lines; they are taking action against companies that are making inappropriate health and medical claims. We fail to understand why CDPH chooses to try to prohibit interstate commerce when the federal government doesn't and when California law does not give the department the authority to do so relative to hemp CBD products.

Remember that a primary policy reason (and the number one reason for Assemblymember Aguiar-Curry) to promote this law was to ensure California consumers are protected from untested and unsafe hemp CBD products. By excluding out-of-state manufacturers from registration, the department is opening the gates for unrelated product to flood the California market. Exactly what none of us want to happen.

It has been nearly a month since this FAQ was posted, and while it is clear that this issue is on your radar, it has become a huge problem for companies that are faced with business decisions about the California market. It is creating unnecessary turmoil and needs to be resolved in favor of the statute immediately.

We have greatly appreciated your express desire to work with the industry as the program is rolled out over the next year or two. Unfortunately, this FAQ has created a rocky start.

Looking forward to a swift resolution.

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