

# ALL BRANCHES OF THE US ARMED FORCES FORMALLY BAN USE OF HEMP AND CBD PRODUCTS



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The United States Navy, the Marine Corps, and the Coast Guard have joined the U.S. Army and Air Force in formally banning the members of each Armed Services branch from using shampoos, lotions, soaps and other topical products made with hemp or hemp-based cannabidiol (“CBD”), which are derived from cannabis plants. The U.S. Coast Guard has followed suit, imposing the same ban on Coast Guard members.

The ban originated in February of 2020, when the Department of Defense announced a new policy barring all active and reserve service members from using hemp products, including CBD. The change in policy was announced in a February 26, 2020 [memorandum](#) issued by the Office of the Under Secretary of Defense to the Secretaries of the Army, Navy and Air Force barring all active and reserve service members from using hemp products, including CBD.

The February 26<sup>th</sup> memo stated that regular use of lawful hemp products could result in a positive urinalysis test for tetrahydrocannabinol (“THC”), the cannabis-derived ingredient that produces the euphoric high associated with marijuana. Marijuana and hemp are both derived from the cannabis plant, with the distinction being that under federal law hemp and any hemp-derived products, such as cannabidiol, are prohibited from containing any concentration of more than 0.03 percent THC on a dry weight basis.

Additionally, the ban was imposed because the U.S. Food and Drug Administration (“FDA”) has yet to promulgate regulations for certification that CBD and hemp products comply with THC concentration restrictions, even though many CBD products are widely available in the marketplace.

The military's concerns became acute after the FDA issued a [Sample Study](#) finding that many commercially-marketed hemp and CBD products contain more THC than allowed for under federal law. The FDA randomly chose 200 products for testing in 2020, including tinctures, oils, capsules, edibles, drinks and pet products. Testing for cannabinoids was done for 147 of the 200 products and found that 49% contained some THC. Out of the 102 products that listed a specific amount of CBD, 18% of products contained significantly less than the amount indicated and 37% contained significantly more than indicated.

On April 19, 2020, Secretary of the Navy Richard V. Spencer released ALNAV 057/19, which banned the use of all products derived from hemp or marijuana, including CBD, even if those products are considered legal in states where military bases are located. The ban defined "use" as meaning "*to inject, ingest, inhale, or otherwise introduce into the human body. Use includes the knowing use of hemp products designed to penetrate through the skin layer, including but not limited to transdermal patches.*" At the time, the Navy excluded from its ban the use of topical products such as shampoos, conditioners, lotions, or soaps.

On July 24, 2020, new Navy Secretary Kenneth J. Braithwaite expanded the ban to encompass all hemp and CBD products, including topical products like lotions and shampoos. Announced in ALNAV 074/20, the message supersedes previous guidance and is currently binding on all sailors, Marines and Coast Guardsmen. The new ALNAV bans use of any hemp product or product derived from hemp and violations can occur without regard to intended physical or mental consequences of the use.

On August 20, 2020, Admiral K. L. Schultz, the Commandant of the U.S. Coast Guard, issued ALCOAST 308/20, extending the same ban on use of CBD and hemp products to all Coast Guard members. According to that order:

5. General Order: Coast Guard members are prohibited from using products made or derived from hemp including CBD, regardless of the product's THC concentration, claimed or actual, and regardless of whether the product may be lawfully bought, sold, and used under the law applicable to civilians. Failure by military personnel to comply with this General Order is a violation of the Uniform Code of Military Justice. Violations may result in administrative or other disciplinary action. The prohibitions specified in this paragraph are general intent offenses and applicable to all Coast Guard military personnel.
6. Definition of Use: To inject, ingest, inhale, or otherwise introduce into the human body (e.g. oral ingestion, smoking/vaping inhalation, topical skin application).

“Use” also includes the use of topical products containing hemp and CBD, such as shampoos, conditions, lotions, lip balms, or soaps.

7. Definition of Hemp: For the purpose of this order, “hemp” is defined as found in 7 U.S.C. 1639o, and means the plant *cannabis sativa* L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Until the U.S. Food and Drug Administration issues regulations governing the CBD industry, the Defense Department and all branches of the Armed Services are concerned soldiers, sailors, Air Force personnel, Marines and Coast Guard members cannot “rely on the packaging and labeling of hemp products in determining whether the product contains THC concentrations that could cause a positive urinalysis result.” Any member of the Armed Forces who tests positive for THC, regardless of the legality of the product that contained it, faces zero tolerance administrative processing that could trigger an Other Than Honorable discharge, loss of veteran’s benefits and federal and state gun rights.

The only exception is for the use of any properly prescribed medication that contains THC and has been approved by the FDA. To date, the FDA has not approved a marketing application for cannabis for the treatment of any disease or condition. The agency has, however, approved one cannabis-derived drug product: Epidiolex (cannabidiol), and three synthetic cannabis-related drug products: Marinol (dronabinol), Syndros (dronabinol), and Cesamet (nabilone). These approved drug products are only available with a prescription from a licensed healthcare provider. Importantly, the FDA has not approved any other cannabis, cannabis-derived, or cannabidiol (CBD) products currently available on the market.

Ironically, the US House of Representatives recently approved by a vote of 336-71 an amendment to the National Defense Authorization Act that would allow all service members to use legalized products containing hemp and CBD. Introduced by military veteran Representative Tulsi Gabbard (D-Hawaii), the amendment states that the “*Secretary of Defense may not prohibit, on the basis of a product containing hemp or any ingredient derived from hemp, the possession, use, or consumption of such product by a member of the Armed Forces.*” Another NDAA amendment, introduced by Rep. Ruben Gallego, (D-Ariz.), would allow service members to reenlist despite an admission to previously using marijuana while separated from the military.

Whether either amendment will pass the U.S. Senate remains to be seen.



Richard M. Blau leads GrayRobinson's Cannabis Law Group, focusing on the laws that govern the production, processing distribution, marketing and dispensing of cannabis products, including medical marijuana as well as hemp and derivative CBD products. Richard devotes a substantial portion of his practice to trade regulation, legislative lobbying, and M&A compliance guidance involving the members of the emerging cannabis industry.

For more information regarding the new guidelines and their implementation, please contact GrayRobinson's CannabisLaw Group at (866) 382-5132 or [cannabislaw@gray-robinson.com](mailto:cannabislaw@gray-robinson.com)