

# THC and CBD Products

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# The Listing of THC

- $\Delta^9$ -tetrahydrocannabinol (“THC”) was listed January 3, 2020 as a reproductive toxicant
- One-year grace period before enforcement can be initiated regarding THC exposures
  - CBD products on shelves as of January 3, 2021 may require a warning, so label changes or reformulation should be assessed immediately
- No Maximum Allowable Dose Level (“MADL”) safe harbor for THC
- Of course, marijuana contains THC
- Cannabidiol (“CBD”) products often have detectible levels of THC

# Federal Law v. Prop 65

- 2018 Farm Bill exempts CBD products with 0.3% or less THC from the definition of “marijuana” under the Federal Controlled Substances Act
  - Defined as “hemp” instead of “marijuana”
- Even if OEHHA promulgates a safe harbor MADL, it would likely not line up with the federal standard for distinguishing between hemp and marijuana
- Preemption?

# Risk of Enforcement

- To execute a certificate of merit and issue a notice of violation, a Prop 65 enforcer only must have evidence of THC content and exposure
- Considerations:
  - THC content in the CBD product
  - Ingestion or topical use
  - Frequency and dose of use
- Other listed chemicals of concern for CBD products?
  - $\beta$ -myrcene, pulegone, myclobutanil, carbaryl
- Naturally occurring exception?

# Questions

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