

FAQ

Marijuana Advertising

For The Radio
Account Executive

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Prepared for the Radio Advertising Bureau

RAB RADIO
ADVERTISING
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These FAQ's are provided for general information purposes only and should not be relied upon as legal advice pertaining to any specific situation.

1. Is Marijuana legal at the federal level?

No. Even though many states have recently legalized medical and/or recreational marijuana sales, the sale of marijuana remains illegal under federal law.

2. Has there been a change in attitude about Marijuana from the Obama administration to the Trump Administration?

Under the Obama administration, the Department of Justice (DOJ) had advised that the Feds would refrain from enforcement against sales in a state that were legal under that state's law. However, things became a lot less clear when the Trump administration's Attorney General Jeff Sessions issued a memo back in January signaling a possible crackdown. As of now, no change has taken place.

3. Has the FCC issued any guidance on marijuana ads?

Although the FCC has generally warned stations not to advertise "illegal" products, to date, the FCC has yet to issue any official guidance about how they view marijuana ads - no rulings, no policy statements, no enforcement actions. And there is no telling when, or if, the FCC will address the issue.

4. Is Marijuana advertising legal in my state?

Maybe. Before going forward with a marijuana ad, you should do a careful check of the law in your state. Many states that have legalized marijuana sales have strict regulations regarding the content of marijuana advertising.

5. If Marijuana is legal in my state, should I assume it's OK to air marijuana ads?

No. It's a risk assessment, but at this point it may be best to err on the side of caution because, at the end of the day, your station operates based on a federal license.

There is some FCC precedent - related to lottery and casino ads - for the proposition that a federal prohibition should not apply to the licensee of a broadcast station who is acting consistent with state law.

But as long as marijuana is illegal at the federal level, it's possible that listeners may file challenges against radio stations that run marijuana ads when FCC licenses come up for renewal of their 8-year license terms starting toward the end of 2019.

6. Is Radio advertising different from digital advertising?

Most significantly, there is no federal license associated with digital media. The FCC's authority flows from your radio station license and the Commission generally will not go outside its jurisdiction to reach beyond issues directly associated with broadcast operations.

The legal status of marijuana remains the primary risk for digital media advertising, but the intricacies of digital media marijuana advertisement law in any state that you might reach an audience take on more importance.

7. What are some of the most common restrictions that states put on digital marijuana ads?

States that have laws about digital marijuana advertising generally address one or more of the following three concerns: (1) making sure that ads do not geographically target audiences that live outside the state in which marijuana is legal, (2) making sure that ads are not targeted to anyone under 21, and (3) making sure that ads are not false or misleading.

8. How can I look up the digital marijuana ad rules in my state?

Because there is no requirement for the states to harmonize their regulations with each other, the laws vary widely, often in ways that are not at first obvious.

If you want to get more details about your specific state, you can check [here](#) and [here](#).