



Relative to Beverage Manufacturing Ingredients and the Use of CBD as a Food Additive by NHLC Licensees

Relative and Applicable Statutes and Rules:

RSA 175:1 VII, 175L1 VIII, 175:1 XXV-a, 175:1 XXV-b, 175:2, 178:12, 178:12-a, 178:12-b, 21, and U.S.C. § 802(16).

1. Purpose.

The New Hampshire Liquor Commission, Division of Enforcement and Licensing (“Commission”) has provided this interpretation of law in response to questions from the public and New Hampshire beverage manufacturing industry (manufacturers).

The question presented is whether the Commission will follow the federal guidelines issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Department of the Treasury on the use of formulas or labels for alcohol beverages products that contain a controlled substance under Federal law, including marijuana?

The purpose of this revised document is to further review the use of CBD¹ oils as additives to alcohol beverages sold or provided by Commission retail licensees licensed under Title XIII, Chapter 178.

2. Authority.

Administrative Rule Liq. 201¹ gives the Commission the authority to interpret statutes and administrative rules. Therefore, this question falls within the authority of the Commission. The purpose of Title XIII is to provide an orderly and controlled environment for the manufacture, wholesale, and retail sale of alcoholic beverages. To that extent, the General Court has charged the Commission with the fair and reasonable interpretation of the statutes and the administrative rules established under law.

3. Discussion of the Issue.

The following information is taken from the TTB’s website and discusses the applicable federal laws and agency position on the question of alcohol formulation using a controlled substance.

¹ CBD is one of many compounds, known as cannabinoids, in the cannabis plant.



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“TTB will not approve any formulas or labels for alcohol beverage products that contain a controlled substance under Federal law, including marijuana. The Controlled Substances Act (CSA), 21 U.S.C. § 802(16), defines marijuana as all parts of the Cannabis sativa L. plant (and its derivatives) with certain specific exclusions. Substances (such as tetrahydrocannabinols (THC), cannabidiols (CBD), or terpenes) that are derived from any part of the cannabis plant that is not excluded from the CSA definition of marijuana are controlled substances, regardless of whether such substances are lawful under State law. See Drug Enforcement Administration (DEA), [Clarification of the New Drug Code \(7350\) for Marijuana Extract](#) for more information about DEA's position on cannabis derivatives. The parts of the cannabis plant that are excluded from the definition of marijuana in the CSA (referred to here as "hemp" ingredients) include hemp seed oil, sterilized hemp seeds, and non-resinous, mature hemp stalks.

Formula approval from TTB is required before a hemp ingredient may be used in the production of an alcohol beverage product. In determining whether a hemp ingredient is allowable for use in an alcohol beverage, TTB will consult with the DEA where appropriate and defers to the DEA in its interpretation of the CSA.

TTB also consults with the U.S. Food and Drug Administration (FDA) on ingredient safety issues where appropriate. In some cases, TTB may require formula applicants to obtain documentation from FDA indicating that the proposed use of an ingredient in an alcohol beverage would not violate the Federal Food, Drug and Cosmetic Act.

For alcohol beverage products containing a hemp ingredient, the product label must accurately and specifically identify the ingredient in a manner that makes it clear that the ingredient is not a controlled substance (e.g., "hemp seed oil" rather than "hemp oil"). Additionally, labeling statements for alcohol beverage products may not create the misleading impression that the product contains a controlled substance or has effects similar to those of a controlled substance. For more information, including requirements for lab analysis of hemp components, please refer to the "[Hemp Policy](#)" published by our predecessor agency in 2000.

TTB notes that section 7606 of the Agricultural Act of 2014, commonly referred to as the Farm Bill, defines "industrial hemp." See 7 U.S.C. 5940. Subject to certain restrictions, this law allows an institution of higher education or a State department of agriculture to grow or cultivate industrial hemp for purposes of research where allowed under State law. As explained by the Statement of Principles on Industrial Hemp which was issued by USDA, in consultation with DEA



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and FDA, and published in the Federal Register on August 12, 2016, Section 7606 does not authorize the sale of industrial hemp "for the purpose of general commercial activity." Accordingly, it is TTB's understanding that the Farm Bill does not authorize the use of industrial hemp in the production of alcohol beverage products for sale beyond limited State-sanctioned pilot projects by authorized entities."ⁱⁱ

In the discussion of the use of CBD's as a food additive the Commission has looked to other state and federal agencies for their expertise and interpretation of the appropriate use of CBD oils in the process of manufacturing food and drink products for consumers.

The New Hampshire Department of Health and Human Service, Food Protection Section (DPHS), has provided guidance to the Commission on this question. The following information represents the position of DPHS on the appropriateness of the use of CBD oils as a food additive.

The DPHS Food Protection Section refers to the US Food and Drug Administration Food Code, which is incorporated by reference into the agencies administrative rules, when regulating food establishments. Under the FDA's Food Code, CBD products, including CBD oil, would be considered a food additive if added to food and beverages. Per the FDA's Food Code, all food additives need to either be on the FDA's Generally Recognized as Safe (GRAS) list, or the approved additive list. **CBD oil is currently not on either list, and as such, is not allowed to be added to food under the Food Code and NH Food Protection Regulations.**

Therefore, in the interest of public health and safety, the Commission has recognized the information supplied by DPHS to be the most authoritative and accurate information on whether CBD oil may be used as a food additive in New Hampshire and more specifically by licensees of the Commission with respect to service of food and beverages to consumers.

It is the position of the Commission after review of applicable state and federal laws, that CBD may not be used as an additive in the production of alcoholic beverages by licensed beverage manufacturers, nano brewers, wine manufacturers, distillers or liquor manufacturers. We further adopt the position of the New Hampshire DPHS that CBD is not a recognized food additive. Therefore, we prohibit its use by our retail licensees until such time as it may be added to the approve list of additives by the US FDA and the NH DPHS.



4. Questions Presented to the Commission from NH Manufacturers and NH Retail Licensees.

Q. Will the Commission follow the federal guidelines on questions of beverage formulation and labeling?

A. Yes.....in addition to the US Code and the Code of Federal Regulation (CFR), New Hampshire's Title XIII (RSA Chapters 175-180) governs the manufacturing and distribution process of beverages (RSA 15:1 VIII) and beer (RSA 175:1 VII). If New Hampshire law is silent on a specific related to the question of product formulation the Commission will apply the relevant federal laws or regulation to our interpretation.

Q. Do these laws and rules apply to both beverage manufacturers (RSA 178:12) and nano breweries (RSA 178:12-a)?

A. Yes.....the laws apply to both the beverage manufacturers and the nano brewers.

Q. Must tenant brewers (RSA 178:12-b) and contract brewers (RSA 175:1 XXV-a) also adhere to the guidelines when brewing?

A. Yes.....there are no exceptions in Title XIII allowing tenant brewers and contract brewers to include prohibited ingredients in their beverages. Contract brewers in New Hampshire **may not** manufacture beverages containing prohibited ingredients for a third party even if it is allowed in another state.

Q. Are there any specific state laws in New Hampshire that apply other than relying on the federal government's laws and regulations?

A. Yes.....RSA 175:2, I empowers the Commission to take action to ensure the safety of alcohol beverages sold in New Hampshire. The relevant language follows:

"The commission shall cause such precautions to be taken as it may deem necessary to insure the purity and freedom from misbranding of all liquors sold. It shall be unlawful to offer for sale or to sell any liquor or beverage as defined in this chapter which is adulterated with any deleterious drug, substance, or liquid which is poisonous or injurious to the health."

Q. But marijuana is legal in many states and it seems unreasonable for the federal government and the State of New Hampshire to prohibit a derivative from being used in the manufacture of beer and beverages.



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A. The Commission will strictly apply New Hampshire law and adopt federal guidelines issued by TTB and the US Drug Enforcement Administration when considering the use of ingredients in the manufacture of beer and beverages in New Hampshire.

Q. If I have unknowingly manufactured beer that contains some prohibited ingredients. Can I sell what I have remaining?

A. NO.....any beer or beverages manufactured using prohibited ingredients must be immediately removed from the marketplace and destroyed.

Q. Are there penalties I could incur if I violate the NH laws and federal guidelines in manufacturing beer or beverages with prohibited ingredients?

A. Yes.....this advisory is intended to alert all beverage manufacturers, nano brewers, tenant brewers and contract brewers of existing law and how the Commission will apply the law in New Hampshire. Failure to follow these laws may result in a fine and/or a loss of your license in New Hampshire and possibly a loss of your TTB brewers permit.

Q. I am a licensed retailer. Everything I read tells me CBD is harmless and may actually has some beneficial uses, so why can't I use it in the food and beverages I serve?

A. The Commission is not the expert on the topic of CBD's, and therefore, we must look to other agencies with direct jurisdiction over the topic and bring their opinions and their interpretation of the law into this circular. The agency responsible for the interpretation of the appropriateness of using CBD as a food additive has deemed it to be unapproved for use as a food additive. Therefore, we adopt their position until such time as the law on CBD's changes.



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Q. I don't believe CBD presents any health risk to people....where do you get your information from?

A. The FDA has produced a briefing document regarding CBD and notes CBD may be hepatotoxic (cause liver damage). That document is located here:

<https://www.fda.gov/downloads/advisorycommittees/committeesmeetingmaterials/drugs/peripheralandcentralnervoussystemdrugsadvisorycommittee/ucm604736.pdf>

Q. If I chose to serve CBD's as an additive as a Commission licensee what is going to happen if I get caught?

A. You are reminded that RSA 175:2, I empowers the Commission to take action to ensure the safety of alcohol beverages sold in New Hampshire. The relevant language follows:

"The commission shall cause such precautions to be taken as it may deem necessary to insure the purity and freedom from misbranding of all liquors sold. It shall be unlawful to offer for sale or to sell any liquor or beverage as defined in this chapter which is adulterated with any deleterious drug, substance, or liquid which is poisonous or injurious to the health."

With this industry advisory, the Commission is attempting to preserve the health and welfare of the public and to provide guidance to the impacted industry. If you chose to ignore our guidance, then your business may be subject to administrative sanctions on your license including the possibility of a fine and/or a loss of your license to sell alcohol.

Q. Who should I contact if I have more questions?

A. Please contact the Division of Enforcement, Licensing and Education at 603-271-3521 to have your questions answered.

i Liq 201.01 Interpretation of Statutes/Administrative Rules. Any question arising, relating to an interpretation of RSA 175- RSA 180, RSA 126-K, or administrative rules adopted by the commission shall be submitted in writing as a petition to the chairman of the liquor commission requesting a declaratory ruling.

ii <https://www.ttb.gov/faqs/a29.shtml>