

## MEMORANDUM

**From:** Martin J. Hahn  
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**Date:** May 2, 2019

**Re: CBD at TTB: TTB Issues New Industry Circular on Hemp-Derived Ingredients in Alcohol Beverages**

Many food and beverage companies are assessing the use of hemp-derived ingredients in their products in light of the 2018 Farm Bill provisions excluding “hemp” from the definition of marijuana under the federal Controlled Substances Act. At the same time, regulators at both the federal and state level continue to explore and develop regulatory frameworks to govern the use of hemp-derivatives in food. The Alcohol and Tobacco Tax and Trade Bureau (TTB) is the latest federal agency to issue guidance on the use of hemp-derived ingredients.<sup>1</sup> This guidance illustrates that TTB is actively thinking about industry desire to use hemp-derived ingredients, such as cannabidiol (CBD), in alcohol beverage products and that TTB is communicating with FDA to establish clearer guidance for industry.

TTB is the federal agency with oversight over the formulation, labeling, and advertising of alcohol beverage products. Prior to the enactment of the 2018 Farm Bill, TTB issued guidance on the use of hemp-derived ingredients in alcohol beverages.<sup>2</sup> This guidance refers to the pre-2018 Farm Bill definition of “marijuana” in the federal Controlled Substances Act, which only had a limited exclusion from the marijuana definition for certain portions of the Cannabis plant. In this guidance, TTB took the view that any ingredient derived from the non-exempt portions of the Cannabis plant (i.e., marijuana), such as CBD, are prohibited from use in alcohol beverages. However, TTB recently issued an industry circular describing the agency’s current position on these products based on the 2018 Farm Bill revisions to the federal Controlled Substances Act.

Although TTB acknowledges that it is still updating its guidance, TTB reiterates that it requires a formula for any alcohol beverage containing hemp-derived ingredients. In addition, although certain hemp-derived ingredients may no longer be considered controlled substances under federal law, TTB explains that it continues to consult with FDA to determine whether certain uses of hemp-derived ingredients would violate the Federal Food, Drug, and Cosmetic Act (FFDCA). Accordingly,

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<sup>1</sup> TTB Industry Circular 2019-1, “Hemp Ingredients in Alcohol Beverage Formulas,” (April 25, 2019), available at [https://ttb.gov/industry\\_circulars/archives/19-1.shtml](https://ttb.gov/industry_circulars/archives/19-1.shtml).

<sup>2</sup> See TTB, Frequently Asked Question (FAQ): Alcohol Beverage Formulas and Labels, available at <https://ttb.gov/fags/a29.shtml>.

TTB will not accept formulas containing hemp-derived ingredients, unless the ingredients are derived from hemp seeds or hemp seed oil. TTB's guidance is in line with FDA's determinations on hemp-derived ingredients, as FDA has not objected to three Generally Recognized as Safe (GRAS) notices for hemp seed-derived ingredients, but has taken the position that hemp-derived ingredients containing CBD are precluded from use in foods, beverages, and dietary supplements under the exclusionary clauses of the FFDCA.

TTB also implies that it will not accept formulas containing hemp-derived ingredients until FDA changes its position that it is a violation of the FFDCA to introduce into interstate commerce any food to which CBD has been added. TTB stressed that, in accordance with FDA policy, alcohol beverage formula applicants can have the FDA declare their hemp-derived ingredients GRAS as a way to demonstrate the safety of their ingredients for formula approval by TTB.

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We will continue to monitor developments related to the use of hemp-derived ingredients. Please contact us if you have any questions on this or any other matter.