

Cannabanoid Food and Beverages - Issues Around Infusing Cannabis, CBD, Hemp, and THC into Edible and Drinking Products

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Who Regulates Food & Beverage Products?



Agricultural Improvement Act of 2018 aka the “2018 Farm Bill”

- ▶ Industrial hemp production became legal in the United States with the passage of the Agricultural Improvement Act of 2018, known colloquially as the “2018 Farm Bill.”
- ▶ The 2018 Farm Bill amended the definition of marijuana under the Controlled Substances Act to exempt “hemp”, as follows:

The term “hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof 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.
- ▶ The 2018 Farm Bill explicitly preserved the authority of the FDA to regulate products containing cannabis or cannabis-derived compounds under the Federal Food Drug & Cosmetic Act (“FD&C Act”).

FDA Position on CBD & THC (from FDA.gov):

- ▶ “Under section 301(ll) of the FD&C Act [21 U.S.C. § 331(ll)], it is prohibited to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which has been added a substance which is an active ingredient in a drug product that has been approved under section 505 of the FD&C Act [21 U.S.C. § 355], or a drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public.”
- ▶ “There are exceptions, including when the drug was marketed in food before the drug was approved or before the substantial clinical investigations involving the drug had been instituted”
- ▶ “However, based on available evidence, FDA has concluded that none of these is the case for THC or CBD. FDA has therefore concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which THC or CBD has been added.”

TTB Position:

- ▶ The Alcohol and Tobacco Tax and Trade Bureau (“TTB”), the Federal agency charged with regulating the manufacture of alcoholic beverages, defers to the FDA on whether the use of hemp ingredients would violate the FD&C Act.
- ▶ As such, and aside from three hemp seed ingredients, the TTB will reject any application for an alcoholic beverage formula containing hemp ingredients, including CBD, delta-8 and/or delta-9.
- ▶ 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. These products may be approved by TTB as alcohol beverage ingredients, subject to formulation review.

“The Loophole”

- ▶ FDA: limited to regulating products placed into “interstate commerce”.
- ▶ TTB: has authority to approve formulas for alcoholic beverages.
- ▶ A brewery producing a non-alcoholic beverage is not required to receive formula approval from the TTB, and so long as such beverage is not “intended to be placed into interstate commerce”, the FDA does not have jurisdiction to prohibit production of such beverage.

2022 Law - “3.2 Weed”

- ▶ Minn. Stat. § 151.72 (2022) allowed for the sale of edible cannabinoid products without requiring a cannabis license or other state registration.
- ▶ 0.3% THC content
- ▶ 5 mg per serving/50 mg per package
- ▶ No sales to persons under 21 years of age
- ▶ Childproof packaging
- ▶ On premise sales permitted



2023: HF 100

- ▶ By October 1, 2023, every person selling edible cannabinoid products register with the Commissioner of Cannabis Management. The form and manner of this registration is to be established by the Commissioner.
- ▶ On March 1, 2025, the 2022 Law is repealed in its entirety.
- ▶ At that time, persons selling “lower-potency hemp edibles” must seek licensure as provided under the 2023 Law.
- ▶ 2023 Law contains provisions for low-potency hemp edible manufacturers and retailers.



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