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# ALCOHOLIC BEVERAGES CONTROL COMMISSION ADVISORY REGARDING CANNABIS IN ALCOHOLIC BEVERAGES

On July 1, 2018, cannabis is expected to become legal for retail sale in Massachusetts. The Commission issues this Advisory to inform the industry on the use of cannabis in alcoholic beverages in the Commonwealth.

Cannabinoid extract from the cannabis plant is considered a Schedule 1 drug by the Drug Enforcement Agency.[1] Infusing or otherwise adding cannabinoid extract in alcoholic beverages is considered adulteration of alcohol under M.G.L. c. 270, § 1.[2]

Please be advised that even though retail sales of cannabis are expected to become lawful starting July 1, 2018, it will remain unlawful to manufacture and/or sell alcoholic beverages containing any cannabinoid extracts, including tetrahydrocannabinol ("THC") and cannabidiol ("CBD"), regardless of whether it is derived from the cannabis plant or industrial hemp.

Any licensee found in violation of the law by manufacturing, transporting, selling, and/or possessing on its licensed premises cannabinoid-infused alcoholic beverages faces potential suspension or revocation of its license. The licensing authorities may also refer any violations to the relevant District Attorney's Office or the Attorney General's Office for criminal prosecution under M.G.L. c. 270, § 1, with a penalty of up to three years' imprisonment.

While cannabinoids, including CBD and THC, can never be used in the manufacture of alcoholic beverages in Massachusetts, industrial hemp can be used in the manufacture of alcoholic beverages. Should a licensee seek to manufacture alcoholic beverages containing industrial hemp in Massachusetts, the licensee first must do two things:

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[1] See 21 C.F.R. 1308.11(d)(23)(drug code 7350). Drug Code 7350 provides the following definition of what is classified as Schedule 1 for cannabis extract: "Marihuana Extract—Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant." See "Final Rule," Drug Enforcement Agency & Department of Justice, December 14, 2016.

[2] It is also likely a violation of the Food & Drug Administration's Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342(a) ("A food shall be deemed to be adulterated . . . . [i]f it bears or contains any poisonous or deleterious substance which may render it injurious to health . . . .").

(1) obtain approval of the alcoholic beverage's formula from the Alcohol and Tobacco Tax and Trade Bureau ("TTB") in accordance with its Hemp Policy dated April 3, 2000, and

(2) obtain a certificate of label approval ("COLA") for the alcoholic beverage from the TTB.

Please be aware that the TTB will only approve a formula if the finished product contains no controlled substance, meaning it cannot contain any cannabinoids, including CBD and THC. Guidelines for the TTB's approval of industrial hemp-infused alcohol can be found at the following link: https://www.ttb.gov/formulation/hemp_policy.shtml.

As always, all licensees must ensure that they comply with all state and federal laws, and that manufacturing and sales of alcoholic beverages take place only as authorized by state and federal law.

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