

# Beer, Hemp, and CBD in North Carolina

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Written By **Tyler J. Russell** (tjr@wardandsmith.com) and  
**Hayley R. Wells** (hrw@wardandsmith.com)

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## The cannabidiol ('CBD') industry is exploding today.

Hemp and hemp-derived CBD were classified as Schedule I controlled substances under the Controlled Substances Act of 1972 ("CSA") until the passage of the Agriculture Improvement Act of 2018 ("2018 Farm Bill") on December 20, 2018. The 2018 Farm Bill, among other things, decriminalized hemp and hemp-derived CBD. That, coupled with the fast-growing popularity and public interest in CBD, resulted in a rush for breweries (and other industry

members) to incorporate CBD in malt beverage products.

Decriminalization of hemp and hemp-derived CBD and its addition to malt beverage products subjects the industry to a host of new laws and regulations, including the Federal Food, Drug, and Cosmetic Act ("FD&C Act"). Since the enactment of the 2018 Farm Bill, the Food and Drug Administration ("FDA") has flexed its muscle to regulate the use of CBD in food, drug, and dietary supplement products under the FD&C Act. And, as we have previously reported, the Federal Tax and Trade Bureau ("TTB") follows the FDA's lead as it relates to the regulation of CBD in alcohol under the Federal Alcohol Administration Act. TTB recently issued an Industry Circular to reinforce that point.

To refresh, the TTB requires breweries to obtain formula approval before using any hemp ingredients in the production of malt beverage products. This requirement applies whether or not your brewery intends to sell or distribute its beers across state lines (interstate commerce) or keep sales wholly within the borders of your home state (intrastate commerce). If the malt beverage products cross state lines, a Certificate of Label Approval (COLA) must also be obtained from TTB prior to distribution and sale. Product formula requests submitted to the TTB must also be accompanied by lab results for the hemp ingredients used. In addition to federal oversight, each state also has the power to regulate the production and sale of alcohol within its own borders – so state-by-state considerations also exist for breweries that intend to use hemp ingredients in their malt beverage products.

The North Carolina ABC Commission ("Commission") recently indicated that it is drafting state-level policies and rules for the use of hemp and CBD in alcoholic beverages. There is no indication yet on what the extent or restrictiveness of those policies and rules will be. However, based on our prior experience with the Commission in these matters, and given the status of CBD-related issues before the FDA and TTB, it is safe to assume that the Commission will continue to tightly regulate and prohibit products brewed, produced, or flavored using hemp floral material or that otherwise contain hemp-derived CBD. The Commission has already indicated that – like TTB – approval will be given for products that are brewed, produced, or flavored using sterilized hemp seeds, hemp seed oil, or mature hemp stalks. There are already numerous examples of products approved for sale in North Carolina that incorporate these ingredients.

Still, some breweries are producing, selling, and distributing beers that contain hemp flower and/or hemp-derived CBD,

despite the risks. Some have been more covert in those efforts, shying away from publicity for their products. Others have been much more public and aggressive in marketing their efforts and products. Not surprisingly, TTB has begun to investigate brewers for potential violations – reviewing their websites, social media posts, and other internet activities for signs of violations. Those efforts have resulted in the issuance of warning letters from TTB, and additional TTB enforcement actions loom on the horizon for breweries that ignore their warnings or federal regulations. Once the Commission finalizes its state-level policies for usage of hemp and hemp-derived CBD, we also anticipate an increase in state-level enforcement actions from the Commission and our Alcohol Law Enforcement (ALE) officers.

For now, brewers should be cautious of bypassing these requirements and going straight to market with hemp and CBD related malt beverage products. The TTB and other regulatory agencies will likely discover your unapproved products, eventually. And, the costs of responding to warning letters and other enforcement actions as well as the business risks stemming from these enforcement efforts could have a significant impact on your business.

We encourage anyone considering hemp or CBD related product manufacture or distribution – and brewing in general – to seek legal counsel before investing significant time and money. Ward and Smith's **Hemp Law** and **Alcoholic Beverage Law** practice team can advise you as you work through these and other complex legal and regulatory issues.

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