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# Cannabinoid-Infused Non-Alcoholic Beverages

## Virtual Town Hall

Minnesota Craft Brewers Guild  
September 1, 2022

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# Town Hall Format

- 5 topics, 60 minutes
- Production
- Distribution
- Retail
- Safety
- Regulation
  
- Audience Q&A



# Purpose and Disclaimer

## Goal:

- Provide insight into the rapidly growing and evolving market for non-alcoholic cannabinoid beverages.
- Provide opinions to market participants, regulatory agencies, and policy makers on non-alcoholic cannabinoid beverages.

**Not Legal Advice:** This is an evolving area and this is based on opinions and interpretations not intended to be relied upon as legal advice.

# Panel Participants

- Steven Brown, Nothing But Hemp, Midwest Cannabis Coalition
- Susan Burns, S Burns Legal PLLC
- Josh Havlik, Miller Hartwig
- Elliot Ginsburg, Garner, Ginsburg & Johnsen, P.A.
- Brandt Erwin, Madigan, Dahl & Harlan, P.A.
- Matt Schwandt, Bauhaus Brew Labs
- Michael O'Neill, Stearns Bank
- Jason Dayton, Minneapolis Cider Company
- Bob Galligan, MN Craft Brewers Guild

# Working Group Members

- Steven Brown, Nothing But Hemp, Midwest Cannabis Coalition
- Susan Burns, S Burns Legal PLLC
- Charlie Levine, Hemp Acres
- Bob Galligan, MN Craft Brewers Guild
- Matt Schwandt, Bauhaus Brew Labs
- Brandt Erwin, Madigan, Dahl & Harlan, P.A.
- Elliot Ginsburg, Garner, Ginsburg & Johnsen, P.A.
- Dayna Frank and Marc Dickhut, First Avenue
- Ashley Hauf, MN Craft Brewers Guild and ABV Technology
- Alex Wegehaupt, ABV Technology
- Jason Dayton and Rob Fisk, Minneapolis Cider Company
- Derek Gruber, Cox Insurance
- Michael O'Neill, Stearns Bank
- Monica Sanchez, S Burns Legal PLLC
- Ryan Welle, 1st National Bank
- Chris Fream, Hohensteins
- Andrew Cedar James, Cedar and James
- Josh Havlik, Miller Hartwig
- David Gullixson, Pioneer Bank
- Nick Swedberg, Boyum and Barenscheer
- Ben Jordan, ABV Technology

# New Products

- Minneapolis Cider: Trail Magic NA THC-Beverages (3 mg  $\Delta 9$  + 5 mg  $\Delta 9$ )
- East Lake: High and Dry (NA dealcolyzed beer, 5 mg  $\Delta 9$ )
- Indeed: Two Good (NA flavored seltzer, 2 mg  $\Delta 9$ )
- Nothing But Hemp: Vibes (NA terpene blend light carbonated beverage, 5 mg  $\Delta 9$ )
- Bent Paddle: CBD+ (NA flavored seltzer, 25 mg CBD + 2 mg  $\Delta 9$ )
- Bauhaus: Tetra (5 mg  $\Delta 9$  + 15 mg CBD)
- Modist: TINT (NA flavored seltzer, 3 mg  $\Delta 9$ )
  - Facebook removed post
- Wild Mind: WLD WTR Infusions (NA flavored seltzer, 5 mg  $\Delta 9$ )
  - Link broken



# Production



# Production: Labeling

- QR Code Info Permissible for:
  - Manufacturer info
  - Lab info
  - Amount (or percentage) of cannabinoids
- Must haves:
  - No health claims
  - Serving size
  - Cannabinoid profile
  - Ingredients and food allergens
  - “Keep this product out of reach of children”
  - Scoring on package



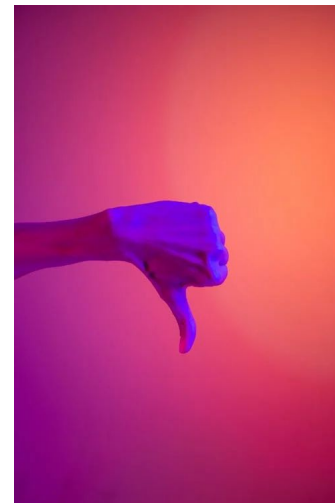
# Production: Labeling

- Format/Font
  - “Easily read and understood”
- Confusion
  - No resemblance to available product (but what if it's your own brand)?
- Best practices:
  - Careful with cartoons
  - Watch for trademarks
  - THC symbol and warning
  - Proper storage



# Production: Labeling Enforcement

- Is it “adulterated drug”?
  - Produced , prepared, packed, or held in unsanitary conditions
  - Amount of cannabinoids different than indicated on label
  - More than .3% of any tetrahydrocannabinol
  - More than 5mg per serving and 50mg per package
  - More than trace amounts of mold, residual solvents, pesticides, fertilizers, or heavy metals
- Is it “misbranded drug”?
  - Labeling is false or misleading



# Production: Labeling Enforcement

- If adulterated or misbranded, Board of Pharmacy can issue cease and desist orders, embargo products, and seek injunctive relief



# Production: Labeling Questions

- Warning statements (e.g., “do not drive or operate heavy machinery after consumption”)?
- Recommended dosage?
- Dealcoholized NA beverages must also comply with state and federal labeling requirements

# Production: Considerations

- Cannabinoids used in edible products (food or beverage) must be 100% derived from “industrial hemp,” as defined in Minnesota Statutes (see Minn. Stat. § 18K.02, subd 3).
- Dry weight of THC in edible cannabinoid products must not exceed 0.3%.
- 5mg THC per serving; 50mg max per package.
- Cannabinoid products used in beverages should be emulsified (i.e., water soluble).



# Production: Considerations

- Manufacturers MUST be able to provide Certificate of Analysis (COA) upon request of regulatory authorities to verify the THC content of edible cannabinoids.
  - This is best practice regardless of whether requested by regulatory authorities
- QR code on label is permissible way to link to COA.



## Certificate of Analysis

Sample Name: CHO Pet  
 Tested for: Applied Basic Science Corporation  
 Sample ID: 170720V002  
 Sample Type: Infused

**Total Sample Weight:** 15.0000 Milliliters

**Cannabinoid Test Results**  
 Cannabinoid analysis utilizing High Performance Liquid Chromatography (HPLC, QSP 5-4-4-4)

**Cannabinoid Summary**

**Total THC** Δ9THC+THCa 36.60 mg

**Total CBD** CBD+CBDA 743.40 mg

**Full Cannabinoid Profile**

THC	ND	2.44 mg/ml
THCa	ND	ND
CBD	48.86 mg/ml	48.86 mg/ml
CBDA	0.70 mg/ml	0.70 mg/ml
CBN	0.32 mg/ml	0.32 mg/ml
CBDV	0.59 mg/ml	0.59 mg/ml
CBDVa	ND	ND
CBC	2.22 mg/ml	2.22 mg/ml
CBGa	0.18 mg/ml	0.18 mg/ml
THCV	ND	ND
Δ8-THC	ND	ND
CBC	3.57 mg/ml	3.57 mg/ml
<b>Total Active Cannabinoids:</b>		<b>58.88 mg/ml</b>

**Pesticide Test Results**

Pesticide, Fungicide and plant growth regulator analysis utilizing HPLC-Mass Spectrometry

	Reporting Limit
Acequinolyl	Not Detected 0.1
Abamectin	Not Detected 0.25
Bifenazate	Not Detected 0.1
Diniconazole	Not Detected 0.5
Fenoxycarb	Not Detected 0.1
Imidacloprid	Not Detected 0.2
Myclobutanil	Not Detected 0.1
Permethrin	Not Detected 0.2
Pyrethrin	Not Detected 0.5
Spiromesifen	Not Detected 0.1
Spiridolifen	Not Detected 0.1

**Microbiological Test Results**

3M Petrifilm and plate counts for microbiological contamination  
 Total Yeast and Mold <1,000 cfu/g E. coli ND  
 Pseudomonas ND Coliforms <100 cfu/g  
 Total Aerobic Plate Count <1,000 cfu/g Salmonella ND

**Terpene Test Results**

Terpene analysis utilizing Gas Chromatography - Flame Ionization Detection (GC - FID)

	mg/g / %		mg/g / %
α Bisabolol	N/A	α Terpinene	N/A
α Pinene	N/A	Linatool	N/A
3 Carene	N/A	Limonene	N/A
Borneol	N/A	Myrcene	N/A
β Caryophyllene	N/A	Fenchol	N/A
Geraniol	N/A	α Phellandrene	N/A
α Humulene	N/A	α Caryophyllene Oxide	N/A
Terpinolene	N/A	Terpinol	N/A
Valencene	N/A	β Pinene	N/A
Menthol	N/A	R(+)-Pulegone	N/A
Nerolidol	N/A	Geranyl Acetate	N/A
Camphene	N/A	Chromolol	N/A
Eucalyptol	N/A	p-Cymene	N/A
α Cedrene	N/A	Ocimene	N/A
Camphor	N/A	Guaiol	N/A
(-)-Isopulegol	N/A	Phytol	N/A
Sabinene	N/A	Isoborneol	N/A
<b>Total Terpene Concentration:</b>			<b>N/A</b>

**Residual Solvent Test Results**

Residual Solvent analysis utilizing Gas Chromatography - Flame Ionization Detection (GC - FID)

Propane	N/A	Ethanol	N/A
Methanol	N/A	Isopropanol	N/A
Isobutane	N/A	Mercaptan	N/A
2,2-Dimethylbutane	N/A	2-Methylpentane	N/A
3-Methylpentane	N/A	Cyclohexane + Benzene	N/A
Isopentane	N/A	Neopentane	N/A
n Butane	N/A	n Heptane	N/A
n Hexane	N/A	n Pentane	N/A

**Sample Certification**



Scan to verify at scslabs.com

*Josh Werfer*  
 Josh Werfer, President

# Production: Banking



- Manufactures/sellers of edible cannabinoids should check with their banking institution to see how the bank will treat funds derived from sales of edible cannabinoids.
  - Community banks usually ok with these sales
  - National banking institutions (e.g., US Bank, Wells Fargo, etc.) may halt/void transactions as a result of sales of edible cannabinoids.
    - Not theoretical - this HAS happened
    - If you bank with a national institution, strongly recommend setting up account with community bank for deposits derived from the sale of edible cannabinoids



# Production: Insurance



Am I covered?

- Standard policies vs Excess & Surplus (Specialty Markets)
  - General Liability (Product Liability)?
  - Property coverage?
  - Inland marine.....Goods in transit?
  - Liquor Liability?
- Most standard carriers are either;
  - Silent on coverage
  - Exclude “cannabis” and provide “hemp” carveback.....maybe!
  - **How cannabis and hemp are defined are key!!! Not all policies are equal.**

# Insurance Considerations - Carriers will evolve.

## Specialty Markets

- Until standard markets can wrap their minds around this new legislation, might be best to look at specialty markets.
- To reduce the chance of voiding your coverage:
  - Provide complete ingredient list for every product
  - Warning labels in compliance with state guidelines
  - Certificates of Analysis (COAs) important for measuring THC
    - Must meet the definition of hemp
  - Follow the most current state law. DO NOT break the law!
- Unsure? Talk to your Insurance Advisor



# Distribution

# Distribution

- **Can I distribute NA beverages with hemp-derived and certified cannabinoids?**
  - Under current state law, there is nothing that prohibits the distribution of non-alcoholic THC-infused beverages.
  - This allows for both self-distribution and sales through a distributor/distribution network.
  - Distributors have started to distribute these types of products to various retail channels, with the recognition that traditional liquor stores are prohibited from selling these products within their stores.
- **Liquor store AGED guidance and potential legislative modifications to allow these products**
  - Minn. Stat. 340A.412, subd. 14 specifically identifies what liquor stores are permitted to sell.
  - AGED takes the position that THC-infused non-alcoholic beverages do not fall on that list. Also, the definition of “food” was modified to specifically exclude these products.
  - As a result, while regulation is currently sparse, one of the existing regulatory determinations is that liquor stores are prohibited from selling these products inside their stores.
  - Does not prohibit sales outside the store.
  - Should seek a legislative change to include edible cannabinoids otherwise lawful under Minn. Stat. 151.72 to fall under enumerated list of Minn. Stat. 340A.412, subd. 14.
  - Traditional liquor stores and retailers have the existing knowledge related to regulated products and should be the avenue for package sales.
- **Warehousing and Delivery**
  - Distributors generally have capability and storage capacity to store these products, including any required climate-controlled cold storage and rolling stock.
  - Questions surround what constitutes a “package” for the purposes of the 50 mg cap on THC per package.
  - Delivery/distribution limited to confines of state of Minnesota.
  - Need to be cognizant of any temporary moratoriums in place that would prohibit sales/delivery in certain jurisdictions.
- **Banking concerns**
  - Segregation required for sales specific to THC-infused products?
- **Insurance risks**
  - Both banking concerns and insurance risks remain, including coverage for warehouse as it relates to these products.
  - Likely possible to segregate products from other regulated products.

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**Retail**

# Retail: Sales

- Can my bar sell THC/CBD beverages?
  - Be cautious of verbal exchanges between employees and customers
    - Consider adopting a training program to educate employees
- Can my Off-Sale liquor store sell THC/CBD beverages?
  - According to MN AGED, not presently. This is an area where legislation / clarification is needed.
- Can my tap room sell THC/CBD beverages?
  - Current trend seems to be that THC beverages are being sold to consumers unopened for consumption both onsite and as take home product.
- Can my retail store sell THC/CBD beverages?
- Can private / municipal liquor stores sell my THC/CBD infused NA beverages?
  - There is no statewide licencing or restrictions currently in place. But some cities are implementing restrictions.

# Retail: Banking/Payment Concerns

- Retail-specific Banking concerns
  - If you are with a large bank, be prepared for the possibility of accounts to be frozen
  - Best to start working with local banks like Stearns or Midcountry Bank
  - Contact your bank to get clarification on their policy
- PoS/CC Processing concerns
  - Contact POS company to confirm they will handle the money
  - Square has been very easy to work with as an existing customer. Able to fill out information online, and received approval in 24 hours.
  - Lightspeed



# Retail: Point of Sale

- Inquire with your POS processor about how they will treat payments for edible cannabinoid products
- Square POS requires approved application to sell edible cannabinoids via its “CBD Program”
  - Requires submission of COA
  - Fairly quick turnaround (~24 hours)



# Retail: Insurance

- Insurance risks: Retail-specific issues? See Production slide.
  - Around general liability, proceed with caution. Do not rely on a “maybe” for coverage. Seek out specialty coverage and ask your current agent to clarify and document in order for the coverage to be sufficient.
  - Alcohol and THC consumption side by side in taprooms is a new concept.
  - No dram shop law applies to Cannabis yet, Pilot laws have been proposed in NV under the name “gram shop”. This is likely where public consumption regulation will go.
  - Exclusions can exist on general liability, property, or inland marine (mobile property). Make sure you check your policy in each section. Some carriers are ok with property (for now) but not the general liability on the craft beverage side (confirmed with both Cincinnati, and Secura).
  - Most cannabis insurance options available will be in the E&S (excess and surplus) market meaning you need to know what’s actually in the policy. These types of policies aren’t regulated by the department of commerce and don’t hold the same protections to the policy holder.
  - Deciding to manufacture and/or serve THC beverages may get you non-renewed by your insurance carrier. Be sure to check with your agent.

**Safety**

# Safety

- How can producers and retailers help to ensure consumer safety?
  - Limits - Tracking - Training
- Label warning and suggestions statement
  - Suggested Use - medical - overuse - warning
- California warning suggestion (not in this market - can not use the term intoxicating)
- Uptake time and emulsion size study, ensure proper suspension within the beverage. (Smaller emulsion size the faster consumer feels the product). Fast is good and takes away elevated risk of overconsumption.
- Make sure you only use reputable vendors for hemp derived THC. (Receive COA from supplier and retest every time)
- Establish testing of your product and put a plan in place for regular batch testing.
- Establish batch codes and keep records of every batch in case of possible recall.
- Establish good cleaning protocols to limit the risk of contaminants.
- Properly train and actively oversee staff. Check IDs, watch for signs of intoxication, put per person limits on the number of THC beverages when on-site consumption exists.
- Do not allow or strictly limit on the clock consumption because of increased work comp and commercial auto risk.

# Regulation

# Regulation

- **Can I produce / distribute / sell these beverages legally under state and federal labeling, formula approval and COLA rules?**
  - Any beverages that contain alcohol during any point of their production must abide by all state and federal rules.
  - Dealcoholized beverages can have cannabinoids added to them, but not alcoholic beverages
- **Will the TTB continue to do test-and-approve formulations as they discussed?**
  - No approvals for formulas containing controlled substances as defined by federal law
  - Some hemp components can be included in formulas, but not with any controlled substances (THC)
- **How will city and county regulations (licensure, etc.) affect breweries, retailers, etc.**
  - City and county moratoriums
  - More guidance and regulation before deciding specifics and writing code.
- **What are the key messages that this working group should communicate to industry members, regulators, and policy makers?**
  - The main issue and concern is for our hemp derived THC industry to remain local.
  - Laws and regulations should be created to ensure the success of MN business' of all sizes in this new industry.
  - Formation of a new regulatory body to oversee the industry and ensure that products are created, transported, and served in a safe and efficient manner.
  - Recommendation that this body not be the Board of Pharmacy as we believe the scope of regulations stretches beyond pharmacies and also advise that the regulatory body not be overseen by our Alcohol regulators as we believe they are already overworked.

# Vendors List

## Cannabinoids

- Midwest Botanical Coalition
- Envirostar
- Superior Molecular
- Hemp Acres

## Legal services

- S Burns Legal PLC
- Hop Law - Garner & Ginsburg, P.A.
- Madigan, Dahl & Harlan, P.A.,

## Insurance

- Cox Insurance Associates
- Miller Hartwig

## Banking

- Pioneer (Mankato)
- First National (Bemidji)
- Stearns (Cold Spring)

## Point of Sale

- Square

# References

- [MN Statute 151.72](#): Sale of certain cannabinoid products (+ amendments)
- [TTB Circular 2019-1](#): Hemp ingredients in beverage formulas
- [TTB FAQ A29](#): Alcohol beverage formulas and labels
- [MN Board of Pharmacy](#): June 30 2022 FAQ
- [MN Dept of Ag](#): Hemp Derived ECP Guidance for Food Operators
- [MN Dept of Ag](#): Hemp in Food FAQ
- MN AGED: “Guidance on Allowable Product Sales in Liquor Stores”
- Sensible ChangeMN: “Guidance for Local Government”
- [MN Board of Pharmacy](#): “Law Enforcement Hemp-Derived THC Inspection Checklist”
- [Cannabis Law Journal](#): “The Devil in In The Details: The Hijacking of Legal Cannabis Frameworks By Those Who Can - A Minnesota Tale of 10,000 Mistakes”
- [BankBeat](#): “More banks gain a foothold in cannabis”



# Audience Q&A