



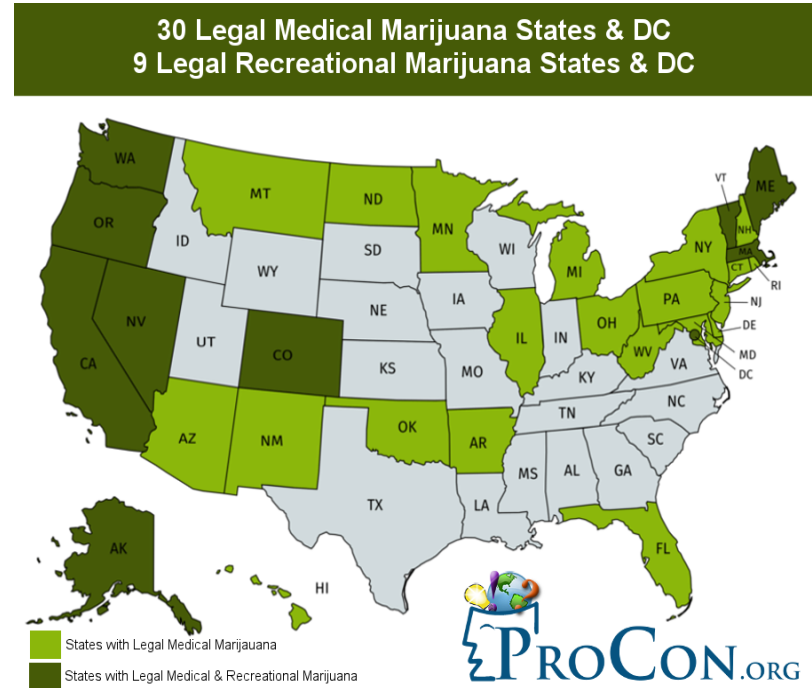
CANNABIS AND CRAFT BEER: RISKS AND OPPORTUNITIES

Alva C. Mather, Esq.
California Craft Beer Summit

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The State of Legalization

- \$10B in 2017 (increase of 33% from 2016). \$25B projected by 2021
- 9 states and D.C. have legalized recreational use, though not necessarily sales
- 30 states, plus D.C. and Puerto Rico have legalized medicinal use in varying formats
- Multiple states moving forward with legalization efforts
- Broad support for legalization even in traditionally conservative states (64% support legalization, 71% feds stay out)



Federal Enforcement Outlook

- Preventing distribution to minors
- Preventing revenue from marijuana sales from benefiting cartels
- Preventing diversion of marijuana
- Preventing marijuana sales from use as money laundering/trafficking purposes
- Preventing violence in cultivation/distribution of marijuana
- Preventing drugged driving and other negative public health issues
- Preventing cultivation on public lands
- Preventing marijuana possession/use on federal property

Cole Memo Era

- 8/29/2013 AG Cole issued memorandum outlining 8 enforcement priorities
- No safe harbor, but reassurance that compliance with state programs provided some shelter from federal enforcement concerns

Sessions Memo

- 1/4/2018 Sessions issued memo rescinding Cole memo and reiterating that marijuana activity is illegal and a serious crime
- Defer to State U.S. Atty for enforcement

State AGs not changing their enforcement policies

■ California

– Attorney General Xavier Becerra

- “In California, we decided it was best to regulate, not criminalize, cannabis. Unlike others, we embrace, not fear, change. After all, this is 2018 not the 20th century. At the California Department of Justice we intend to vigorously enforce our state's laws and protect our state's interests.”

■ Colorado

– Attorney General Cynthia Coffman

- “I do not see a major shift in Colorado in what has been happening in terms of regulation and enforcement of marijuana.”

What are the substances at issue?

- Marijuana
- Cannabidiol (“CBD”)
- Hemp
- Hemp-Based CBD



Hemp vs Marijuana

Marijuana and CBD

- Marijuana
 - Cannabis sativa or Cannabis indica plant (female)
 - Contains the psychoactive cannabinoid THC and other similar compounds
 - Illegal as a Schedule 1 drug – no currently accepted medical use, lack of accepted safety for use, high potential for abuse
- Cannabidoils (“CBD”)
 - Type of cannabinoid
 - December 2016, DEA created new drug code for marijuana extracts



Defining Marijuana and CBD

- “The term 'marihuana' means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.”
- Essentially, **CBD, flowering tops, resin** and **leaves** of marijuana plant
- “Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination”
- In other words, **mature stalks** and **oil made from seeds**

Hemp and Hemp-Based CBD

- Hemp
 - Cannabis plants (male) that contain less than .3% THC
 - “Industrial Hemp” are plants grown according to the 2014 Farm Bill in the U.S. or imported
 - Many uses, including fibers used to make clothing and paper
- Hemp-based CBD
 - CBD can be extracted from hemp plants
 - Not “hemp oil” – which is extracted from the seeds and contains no CBD



What does this mean for CA beer?

- Putting marijuana/CBD in beer is illegal on the federal and state level
- Brewing with hemp/hemp products (but not hemp based CBD) that fall outside the definition of marijuana is permissible



CBD in Beer: TTB Perspective

- Any controlled substance, including marijuana and marijuana-based CBD is prohibited
- However, hemp-based CBD is permitted subject to compliance with the 2000 TTB Hemp Policy
- Increased enforcement to clarify compliance, including increased Cease & Desist letters and other direct actions
- Cause of confusion in the national market





CBD in Beer: California Perspective

- California officially legalized commercial recreational use of cannabis in 2018
- CAABC clarified positions regarding cannabis and alcohol in a July 24, 2018 Industry Advisory:
 - Brewers can hold both an ABC and cannabis license
 - Brewers may not produce or sell alcohol and cannabis at the same or connected location
 - Brewers may not infuse or mix alcohol with either cannabis or CBD products derived from industrial hemp (per July 6, 2018 guidance from CA Dept. of Health, Food & Drug Brand)
 - Brewers may infuse or mix alcohol with hemp seeds or hemp seed oil

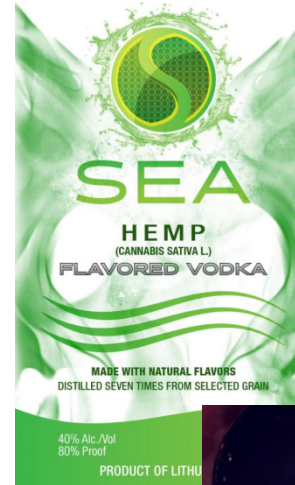
TTB Hemp Policy

- Formula approved required for all beer prior to production, even if only selling in state, unless specifically exempted (different from COLAs)
- Formula approval explicitly required for beer with hemp seeds or hemp oil.
- Specific requirements:
 - Submit lab analysis/report (3rd party) for hemp components & level of detectable THC
 - May be a prolonged process, so plan accordingly
- Time consuming process, plan accordingly



Labeling Hemp Beer

- Labeling (subject to COLA)
 - Prohibited from using term “hemp” in brand name. Only permitted to identify “statement of composition”
 - *Ale brewed with hemp seeds*
 - Prohibited from using graphics, designs etc. implying or referencing presence of hemp



Advertising

- Effects of Social Media Marketing
 - Puts product into interstate commerce
 - Invasive Species Brewing: “A [TTB] representative explained the crackdown on breweries started after recent media coverage alerted the agency to South Florida’s marijuana-beer trend. From there, the agency “went to our Facebook page and found our event, and we were busted.”



Legal Status of U.S. Hemp



- Tension on lawful use of U.S. hemp in beer and other commercial processes
- Federal Agricultural Act of 2014 (“Farm Bill”) only authorized growth of hemp in the U.S. by State Ag. Depts. and institutes of higher education for research purposes.
- Farm Bill prohibits sale of hemp for “purposes of general commercial activity”
- TTB and FDA are not federal regulatory agencies authorized to enforce Farm Bill violations
- However, both TTB in new guidance (FAQ A29) and California of Dept of Health Food and Drug Branch have explicitly noted the potential unlawful use U.S. grown hemp as a source of hemp for alcohol and/or food products
- Worth considering source

Big Picture

■ Northern Neighbors

- **Canada Govt:** Canada has federally legalized the recreational use of marijuana set to go into effect on October 17, 2018.
- **Alcohol Investment:** Constellation Brands pays more than \$4 billion to increase its stake in global medical cannabis company Canopy.

■ State Legalization

- Michigan, New Jersey, North Dakota, New York, and Delaware all have legislation pending to legalize recreational use

■ Federal Efforts

- USAG Jeff Sessions primary obstacle
- Momentum led by Senators in legalized states to relax key federal limitations (banking, DEA classification)

Alva C. Mather

DLA Piper LLP

One Liberty Place

1650 Market Street, Suite 4900

Philadelphia, Pennsylvania 19103

T: 215-656-3324

E: alva.mather@dlapiper.com

 [@alcoholawyer](https://twitter.com/alcoholawyer)



