



Wisconsin Department of Agriculture, Trade and Consumer Protection

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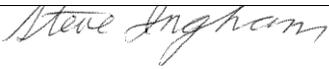
**GUIDANCE DOCUMENT**

**Hemp Products as Human Food Ingredients**

*This guidance document is based on Wis. Stat. § 97.10 and Wisconsin Administrative Code chs. ATCP 22, 70 and 75. This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed.*

1(DFRS)

See attached.

	11-22-2021
Steven Ingham, Ph.D. - Administrator, Choose an item.	DATE

Contributors:

## Overview of Hemp Program

Hemp is the plant *Cannabis sativa* L. and contains many chemical compounds. Wis. Stat. § 94.55(1) defines hemp based on the concentration of one particular compound, total delta-9 tetrahydrocannabinol (THC). Wis. Admin. Code ch. ATCP 22 specifies that testing of hemp must be in compliance with either ATCP 22, or another hemp program authorized under Section 7606 of the Agricultural Products Act of 2014 or Section 10113 of the Agricultural Improvement Act of 2018. Under ATCP 22, hemp must be certified to contain not more than 0.3% total delta-9 THC on a dry weight basis. Cannabidiol (CBD) is another compound that is found in the flowers, stems and leaves of hemp. CBD is not believed to be psychoactive and Wisconsin statutes do not specify a maximum CBD level in hemp or hemp products. Note that CBD derived from marijuana is not permitted under hemp programs, and Wisconsin law does not authorize sale or distribution of marijuana-derived CBD or other marijuana-derived products. CBD is under investigation by the U.S. Food and Drug Administration (FDA) as a drug.

## Hemp as Food or Food Ingredients

Wis. Stat. § 97.10 prohibits the sale of any food that is adulterated. Wis. Admin. Code § ATCP 70.08 (Food Processing Plants) requires that ingredients be " ... safe, wholesome, and unadulterated ... " and "obtained from sources which comply with applicable licensing and inspection requirements." The *Wisconsin Food Code*, which sets requirements in retail food establishments, states that food received by a retail food establishment shall "be obtained from sources that comply with law." ATCP 75 app. § 3-201.11 (A). In that context, "law" is defined as "applicable local, state, and federal statutes, administrative rules, regulations, and ordinances." ATCP 75 app. § 1-201.10.

For foods prepared in Wisconsin and sold only in Wisconsin, *i.e.* not in interstate commerce, food is not considered to be adulterated solely because it contains hemp or a hemp product, as long as the underlying hemp meets statutory requirements. Wis. Stat. § 97.02. Therefore, permitted food ingredients include hemp products if all of the following four requirements are met:

- The hemp source of the ingredient has obtained a "fit for commerce" certificate from DATCP or another state, tribal or U.S. Department of Agriculture hemp program.
- Processing of the ingredient or food containing hemp is done in Wisconsin by a food processing plant or retail food establishment licensed pursuant to § 97.29 or § 97.30, respectively. Hemp-containing food or food ingredients manufactured outside of Wisconsin cannot be used by Wisconsin food businesses because these ingredients are foods involved in interstate commerce.
- Any packaged foods containing the hemp-derived ingredient are accurately labeled to indicate the presence of each hemp-derived ingredient.
- Sales of the finished foods occur only in Wisconsin.

## Why Can't foods containing THC and CBD be Sold Freely Across State Lines?

FDA has 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 delta-9 THC or CBD has been added. In addition to delta-9 THC, hemp also contains the chemical compound CBD. The FDA has been investigating CBD as a drug. Any substance which is being investigated as a drug cannot be added to a food which enters interstate commerce. However, the FDA has completed its evaluation and approved the use of three hemp products for use as ingredients in human food: hulled hemp seed, hemp seed protein powder, and hemp seed oil. These ingredients are approved because hemp seeds do not naturally contain THC or CBD. Food & Drug Admin., *FDA Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers*. Available: <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#qandas> (content last updated January 22, 2021).

## Hemp in Alcohol Beverages

The Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury, which approves alcohol beverage formulas, has issued an Industry Circular stating that "it will return for correction any applications for formulas containing 'hemp' ingredients (other than ingredients derived from hemp seeds or hemp seed oil). Alcohol and Tobacco Tax & Trade Bureau, U.S. Dept. Treasury, Industry Circular No. 2019-1, *Hemp Ingredients in Alcohol Beverage Formulas*. Available: <https://www.ttb.gov/industry-circulars/ttb-industry-circulars-19-1> (content last updated April 25, 2019).