



CBD In F & B

Insights

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There's a lot of confusion and questions about CBD products and what it means for CBD-related industries, especially those in the food and beverage industry. The Agricultural Improvement Act of 2018, also known as the "Farm Bill," removed industrial hemp and products derived from it, including CBD, from the Schedule I list of drugs under the Controlled Substances Act. Which means industrial hemp is no longer illegal at the federal level. So things should be easy, right?

Wrong. In addition to the federal legal maze, states are adopting their own strategies for dealing with CBD in food and beverage.

In A Nutshell . . .

Under the Farm Bill's safe harbor, hemp-derived CBD is legal, as long as the hemp contains no more than 0.3% THC (the psychoactive component of marijuana) and complies with all applicable laws at the places of origin and final destination. But it gets more complicated for food and beverage stakeholders. The federal Food and Drug Administration (FDA) has made it clear that:

- it treats cannabis products like all other FDA-regulated products;
- any product making a therapeutic claim must have FDA approval before introduction in interstate commerce;
- any product intended for the use in the diagnosis, cure, treatment, or prevention of disease will require FDA approval before marketed in the United States;
- marketing CBD or THC as a dietary supplement is illegal; and
- ***foods and beverages containing CBD or THC introduced in interstate commerce are illegal.***

What To Make Of It All

To be clear, the FDA prohibits companies from adding CBD to food, drinks, and supplements. The agency has expressed concerns about the safety of ingesting CBD. But it has also made a commitment to explore the regulatory framework that will allow hemp-derived CBD to become legally widely available to the public.

On the state level, hemp-derived CBD is also highly regulated. While some states have adopted laws permitting and regulating the production, transport, distribution, and sale of hemp-based CBD products, the laws are evolving and differ from state to state. And almost all states have adopted the FDA prohibition on advertising and selling ingestible hemp-derived CBD products.

FDA prohibition on advertising and selling ingestible hemp-derived CBD products.

The Takeaways For Now

All of that being said, there are some takeaways you need to know about the current – and future – state of CBD in our industry.

- Tread carefully into the CBD F&B trend and be certain you are working with reputable suppliers.
- When working with third-party suppliers and vendors, F&B operators should negotiate for strict contractual protections including warranties and indemnities.
- Make certain your contracts provide for immediate termination for non-compliance with laws.
- Except in states where ingestible hemp-derived CBD is permitted (like Colorado and Washington) and the products are wholly produced and exclusively advertised within the state, avoid advertising or otherwise positioning products as foods or beverages.
- And stay tuned . . .

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