



## CBD and the Food and Beverage Industry



The market for food and beverage products containing hemp-derived cannabidiol (CBD) continues to grow. With new CBD products introduced to the market every year, here are some of the top considerations for companies looking to enter the burgeoning CBD space.

### CLARIFYING DEFINITIONS

The Agriculture Improvement Act of 2018 (2018 Farm Bill) removed “hemp” from the federal list of controlled substances. In doing so, the law distinguished “hemp” from “marijuana,” which remained as a controlled substance. Both “hemp” and “marijuana” are parts or derivatives of the cannabis plant (*Cannabis sativa L.*), but federal law draws a distinction between the two as “hemp” has low concentrations of delta-9 tetrahydrocannabinol ( $\Delta 9$ -THC), a naturally occurring psychoactive cannabinoid that is commonly associated with the cannabis “high.” In order to qualify as “hemp” under federal law, the  $\Delta 9$ -THC concentration must be no more than 0.3 percent  $\Delta 9$ -THC on a dry weight basis. CBD is a naturally occurring cannabinoid in the cannabis plant. Manufacturers looking to add CBD should take care to ascertain whether the CBD was derived from “hemp” as a step in complying with the 2018 Farm Bill.

### FEDERAL PERSPECTIVE ON CBD

The 2018 Farm Bill requires food and beverage products containing “hemp,” including hemp-derived CBD, to comply with federal requirements, such as U.S. Food and Drug Administration (FDA) regulations. At the federal level, the FDA maintains that all CBD, including that derived from hemp, is illegal to add to food and beverage products. In part, the FDA reasoned that CBD is not yet an approved food additive and noted that the agency has not determined that CBD is generally recognized as safe.

### CBD AT THE STATE LEVEL

While federal authorities have declared that CBD is unlawful to add to food and beverage products, many state markets allow and regulate CBD products. State laws vary, and it is important to check local requirements as this is a developing area of law. Among other things, states vary on testing and labeling requirements for heavy metals, pesticides, and other potential contaminants.

### AVOIDING UNSUBSTANTIATED HEALTH CLAIMS

While state laws vary, federal and state authorities generally prohibit CBD food and beverage products from making claims that the products can treat or prevent disease. The FDA has issued numerous warning letters against products promising that CBD products could treat or prevent various diseases, such as cancer and COVID-19.

### OTHER CONSIDERATIONS

Manufacturers of CBD food and beverage products should follow the law in appropriate jurisdictions. These laws are subject to change. Several consistent themes are evident across multiple jurisdictions, such as:

- » Clearly and accurately labeling cannabinoid and CBD content.
- » Making mandatory warning statements required in the jurisdiction.
- » Avoiding marketing that is designed to appeal to children.

For additional information, please contact Andrew Kline ([AKline@perkinscoie.com](mailto:AKline@perkinscoie.com), 303.291.2307) or Tommy Tobin ([TTobin@perkinscoie.com](mailto:TTobin@perkinscoie.com), 206.359.3157).