

# Cannabis Policy Institute

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*A Review of the Present*

# THC BEVERAGE MARKET

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UNLV Cannabis Policy Institute and Leaf Street Strategies

# Cannabis Policy Institute

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## About the CPI

The Cannabis Policy Institute at the University of Nevada, Las Vegas is dedicated to the development and advancement of cannabis research, policy, and education. The institute engages with a range of stakeholders and community partners to develop effective approaches to cannabis policy, expand and coordinate educational opportunities, and support and promote research.

Understanding the trends, challenges, and opportunities for the cannabis industry is important for policy development and overall growth. To address the increasing prevalence of intoxicating THC beverages, the CPI enlisted former chief cannabis regulator and the founder/principal of Leaf Street Strategies, Tyler Klimas, to prepare this report.

### **About the Director**

CPI Director Riana Durrett was appointed as director of the UNLV Cannabis Policy Institute in August 2023 where she enjoys the guidance of an advisory board as well as assistance from CPI Director of Research, Dr. Marla Royne Stafford. Durrett also serves as the vice chair of the Nevada Cannabis Compliance Board. Prior to her work with the CPI and CCB, Durrett served as the executive director of the Nevada Dispensary Association, where she established the association as the primary resource on best practices in Nevada's cannabis industry—developing the NDA into the



primary regulatory and government affairs voice for Nevada's cannabis industry. Durrett obtained a JD from William S. Boyd School of Law, as well as an LLM in Gaming Law and Regulation and is admitted to practice law in Nevada and California.

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# A Review of the Present THC Beverage Market

**Tyler Klimas**

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## **TABLE OF CONTENTS**

<b>About the CPI</b>	<b>2</b>
<b>Introduction</b>	<b>4</b>
<b>History of the Hemp-Derived Cannabinoid Market</b>	<b>5</b>
<b>Beverages Take Center Stage</b>	<b>7</b>
<b>Big Cannabis Gets in the Game</b>	<b>7</b>
<b>Explaining the Elements of Hemp-Derived THC Beverages</b>	<b>8</b>
<b>Consumer Trends</b>	<b>8</b>
<b>Normalization of THC and Beverage Approachability</b>	<b>10</b>
<b>Better Products and Controlled Experiences</b>	<b>12</b>
<b>Integration with Alcohol Infrastructure</b>	<b>13</b>
<b>State and Federal Responses</b>	<b>14</b>
<b>Conclusion</b>	<b>16</b>
<b>About the Author</b>	<b>17</b>

# Introduction

In the realm of present-day cannabis policy issues, no discussion is more relevant or consequential than deciphering the future of hemp-derived products within the greater cannabis landscape. The same cannabinoids are found in both marijuana and hemp, but traditional marijuana remains strictly regulated, while hemp and hemp-derived products operate in a vastly different regulatory structure, which has provided an easier pathway for growth and expansion. Currently, there is no unified government response to address questions around the legality of hemp-derived cannabinoids or the regulatory variances that exist between marijuana and hemp. This multifaceted debate is likely to continue for some time.

Of the plenitude of hemp-derived cannabinoid products that exist, hemp-derived THC beverages have experienced unparalleled success. These products have shown an unprecedented ability to break into the traditional adult beverage market alongside beer, wine, and seltzers, capturing an entirely new audience curious about THC products in a remarkably short period of time. These beverages have created a new class of cannabis consumers, tapping into demographics that have been historically slower to access the traditional marijuana markets through regulated retail channels.

Growing consumer preference for drinkable THC options is not solely due to its newfound availability in traditional beverage stores and retail outlets. There are many arguments for why these products have become so popular. From a growing demand for alternatives to alcohol, to the rise in general acceptance of cannabis and THC products, hemp-derived beverage companies have leveraged new technologies to create higher-quality, taste-conscious products that seem to have captivated the palette of the American consumer.

This paper aims to examine the rise in popularity of hemp-derived THC beverages, starting with the history of the hemp-derived cannabinoid industry. Through in-depth conversations with subject matter experts and leaders in the field of hemp-derived and marijuana-derived THC beverages, this paper will explore the nuances of this product category and examine the how and why behind its meteoric rise in demand. These insights will help develop a greater understanding of future cannabis consumer preferences and inform future regulatory and policy discussions.

# HISTORY OF THE HEMP-DERIVED CANNABINOID MARKET

The United States has a long history with hemp dating back to the 17th century. Though it had various uses early on, hemp never reached the same usability and utility as other fiber crops like cotton, which eventually led to its diminished viability.<sup>1</sup> The first restrictive measure levied on hemp occurred in 1937 through the passing of the Marihuana Tax Act. All marijuana and hemp importation, cultivation, and possession was placed under the purview of the U.S. Treasury Department in an effort to curb the expansion of the marijuana trade.

During World War II, hemp production saw a small revival in providing raw materials and textiles to support U.S. war efforts, but cultivation fell off once again following the end of the conflict.<sup>2</sup> From that point on, hemp was largely included in the hardline domestic policy approach to the illegal drug trade, which incorporated hemp into anti-drug policy throughout the following decades.

It was not until the 2014 Farm Bill, which saw the establishment of the Hemp Research Pilot Program, that a renewed interest in hemp was created.<sup>3</sup> This program authorized institutions of higher education and state departments of agriculture to cultivate hemp for research purposes only. The pilot program did not legalize hemp federally, nor did it allow for interstate commerce, but was fundamental for opening future pathways.

Then, in 2018, Congress passed a new Farm Bill that removed hemp from Schedule I of the Controlled Substances Act and established the Domestic Hemp Production Program, placing administration of the program under the authority of the United States Department of Agriculture (USDA)<sup>4</sup>. The bill granted authority to states, territories, and tribes to oversee hemp production under an approved plan by the USDA or under a general license by the USDA itself.

The 2018 Farm Bill changed the definition of hemp to “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9

1 [https://www.ers.usda.gov/webdocs/publications/41740/15867\\_ages001e\\_1\\_.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/41740/15867_ages001e_1_.pdf?v=0)

2 [https://www.ers.usda.gov/webdocs/publications/41740/15867\\_ages001e\\_1\\_.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/41740/15867_ages001e_1_.pdf?v=0)

3 <https://www.congress.gov/bill/113th-congress/house-bill/2642>

4 <https://www.congress.gov/bill/115th-congress/house-bill/2>

tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.” This new definition effectively legalized products derived from the hemp plant, provided that the final product did not exceed 0.3% of Delta-9 THC calculated on a dry weight basis, though legal scholars still debate if the Farm Bill actually authorized the retail sale of these products.<sup>5</sup> Whether actively or passively permitting sales of these products, it provided opportunities to transport hemp and hemp-derived products across state lines, opening up new channels for interstate commerce.

Further complicating the web of legality for hemp-derived products is what is known as the drug exclusion rule of the Food, Drug and Cosmetic Act.<sup>6</sup> The Act states that once a substance is used as the active ingredient of a new drug that has been approved or authorized for clinical trials, food and beverages containing this ingredient cannot be introduced into interstate commerce. The Food and Drug Administration’s (FDA) approval of Epidiolex®, where hemp-derived CBD is the active ingredient, technically eliminated the possibility of producing and selling any food or beverage with CBD. However, the FDA has expressed the need for a new regulatory framework to manage CBD products, among other hemp-derived cannabinoids, effectively given this ambiguity as well as widespread product availability. These statements indicate that existing laws may not be fully equipped to handle the nuances of CBD and hemp regulation, and therefore limit enforceability by the FDA.<sup>7</sup> As a result, the FDA has called upon Congress to address the ambiguity by creating a hemp-derived product regulatory framework.

Since Following the passage of the 2018 Farm Bill and its vast interpretations, the hemp-derived cannabinoid market has expanded rapidly, reaching over more than \$21 billion in sales in 2023, according to a report from Whitney Economics.<sup>8</sup> While the U.S. legal medical and adult-use cannabis marijuana market still grossed higher sales in 2023, at an estimated \$33.6 billion, the growing demand for hemp-derived products was significant, and will continue to be.

Following the 2018 Farm Bill, a wide variety of product types and retail options for hemp-derived cannabinoids quickly grew, becoming prolific. Hemp-products offered included vapes, edibles, beverages, and tinctures; some included intoxicating THC and others only non-intoxicating CBD. Retail outlets such as beer and wine stores, gas stations, smoke shops, and convenience stores began selling the full suite of hemp-derived cannabinoid products. Access to interstate commerce expanded retail options to online sales and e-commerce platforms as well.

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5 <https://www.forbes.com/health/cbd/cbd-legalization-by-state/>

6 <https://www.fda.gov/regulatory-information/laws-enforced-fda/federal-food-drug-and-cosmetic-act-fdc-act>

7 <https://crsreports.congress.gov/product/pdf/IF/IF12477>

8 <https://whitneyeconomics.com/reports>

## **Beverages Take Center Stage**

Included in this new revolution of widely available hemp-derived products was the hemp-derived beverage category. Initial entrants into the hemp-derived beverage space focused on non-intoxicating CBD-infused beverages, like specialty waters, teas, and seltzers. These beverages were marketed to health and wellness consumers and capitalized on the national interest in functional beverages, like probiotic drinks and kombucha. CBD-infused beverages fit well within this increasingly popular category.

Hemp-derived THC beverages further connected to a new generation of adult beverage consumers. A recent Gallup poll<sup>9</sup> unveiled changes in American drinking habits, highlighting significant drops in alcohol consumption among younger adults. With consumer interests shifting towards non-alcoholic alternatives, hemp-derived beverages, including intoxicating forms infused with THC, may have greater appeal.

## **Big Cannabis Gets in the Game**

Cannabis brands have historically manufactured and sold marijuana-derived THC beverages in regulated marijuana dispensaries across states with legal medical or adult-use markets. However, beverages sold in regulated dispensaries tend to be of much higher potency and targeted towards the high-use cannabis consumer.

Seeing the potential to engage consumers through various retail opportunities, such as consumer packaged goods (CPG), rather than a highly regulated drug, traditional marijuana brands started incorporating hemp-derived THC product lines into their portfolios. Producers of hemp-based THC drinks largely migrated to using only hemp-derived Delta-9 THC, under the 0.3% THC threshold defined by the Farm Bill, to combat concerns about the lack of regulation, questions about composition, and the use of synthetic cannabinoids in some hemp products. This paved the way for regulated marijuana companies to enter the hemp-derived THC market, just like they would with any other packaged good in direct-to-consumer sales.

While questions concerning fairness and parity between the traditional regulated marijuana markets and the new hemp-derived THC market remain, there is no denying that a void previously existed for consumers interested in trying THC products, but not accessing them in traditional marijuana dispensaries or in high potency form. Hemp-derived THC beverages held an undeniable advantage in accessing this new market, particularly as interest in beverage alternatives to alcohol began trending upward.

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9 <https://news.gallup.com/poll/648413/alcohol-consumption-increasingly-viewed-unhealthy.aspx>

Thus, a trend began of traditional marijuana-infused beverage brands, including industry leaders like Keef and Cann, moving into the hemp-derived THC market, offering new hemp-derived products alongside their traditional marijuana-derived THC lines. In 2024, larger, multi-state marijuana operators like Curaleaf and Tilray launched their own lines of hemp-derived THC beverages, taking advantage of direct-to-consumer options and the growing opportunities in the hemp-derived marketplace as opposed to confining sales to state licensed, age-gated retail outlets.

## **EXPLAINING THE ELEMENTS OF HEMP-DERIVED THC BEVERAGES**

Though availability does shape consumer interest, the legalization of hemp through federal legislation alone does not explain why hemp-derived THC beverages have become such a popular subset of the greater hemp-derived cannabinoid marketplace. There are several components that have contributed to the evident success. Consensus among industry experts attributes the popularity of the hemp-derived THC beverages to three main factors:

- Shifting consumer trends towards alternative beverages
- Rising general acceptance of marijuana and cannabinoid products and the approachability of THC in beverage form
- Producing higher-quality products and reliable experiences

To further explore the rise in popularity of hemp-derived THC beverages outside of how policy shaped availability, interviews were conducted with professionals in the field with the goal of investigating the complexities that have driven market expansion. Individuals were selected based on industry experience and expertise and asked similar questions. The backgrounds of the interviewees vary, ranging from private equity investors who are investing in the hemp-derived beverage space, regulatory experts who provide ingredients and technologies supporting marijuana and hemp beverages, and association leaders who oversee advocacy groups that include both marijuana and hemp-derived THC beverage brands. These individuals' deep understanding of this complex industry informs the successful rise of hemp-derived THC beverages.

### **Consumer Trends**

A major driver of the hemp-derived THC beverage market growth is the broad consumer base that it attracts. These ingestible products appeal to cannabis users looking



for more options, but more importantly, they have demonstrated an extensive reach outside of the narrow demographic typically observed in traditional marijuana markets, appealing to naive users. Pamela Epstein, Chief Legal and Regulatory Officer at Terpene Belt Farms, a leading manufacturer of hemp-derived terpenes, highlighted this point by identifying that “[hemp-derived Delta-9] beverages offer a manageable entry point for new users and a versatile option for experienced consumers seeking a subtler effect.”

Purchasers of hemp-derived THC beverages are often new to cannabis and curious about trying THC products. Christopher Lackner, Founder and President of the Hemp Beverage Alliance, a trade association representing the hemp beverage industry in the United States, highlighted that consumers are eager to try new alternatives to more traditional adult beverage products. Lackner believes that “increased interest in new and unique things” is driving consumer behavior to try hemp-derived beverages. Similarly, Epstein notes the important coupling of consumer curiosity with greater access to these products, noting that “this accessibility, combined with the appeal of low-dose, socially acceptable consumption methods, makes these beverages attractive to a broader audience.”

Lackner’s sentiments are evidenced as 19% of cannabis consumers ages 18-34 report cannabis beverages as their preferred product type.<sup>10</sup> This is the largest share among all age groups. Overall, younger users tend to be naive in consumption and are receptive to novelty. This is particularly true if that novelty is conducive to social norms. Epstein’s remarks about socially acceptable consumption methods also ring true as the consumption of adult beverages is a wide-spread cultural norm in the U.S. as drinking is deeply integrated into social activities, celebrations, and even casual gatherings.

Ian Dominguez, Founder and CIO of Delta Emerald Ventures, a leading marijuana and hemp private equity investment firm, identifies women over the age of thirty as being a remarkable and growing consumer of hemp-derived beverages. He notes that while traditional marijuana dispensaries typically underperform in attracting and retaining female customers, women are the primary demand driver behind low-potency hemp-derived THC beverages.

This point alone—women’s interest in cannabis beverages over traditional cannabis consumption methods—has large implications for the long-term success of the hemp-derived THC beverage industry. Data suggests that male consumers make up around 60-66% of total cannabis sales in the U.S and Canada.<sup>11</sup> Women, however, make up 80% of the purchasing decisions in the U.S.

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<sup>10</sup> <https://www.statista.com/statistics/1434379/cannabis-beverage-consumers-by-age-us/>

<sup>11</sup> <https://www.headset.io/industry-reports/demographics-report-2023>

A gender gap is clearly evidenced in the traditional marijuana industry that may be dissolving when it comes to hemp-derived THC beverages and the industry's positioning. For example, Tilray recently shared their increased investment into their brands favored by their female consumer base, such as Solei Cannabis.<sup>12</sup> One of the reasons why women may be more amenable to the hemp-derived THC beverage markets could be the concept of wellness, especially when compared to traditional consumption methods which require inhalation.

This "wellness" trend may not appeal to just women; market trends indicate that the younger American consumer, regardless of gender, is taking greater care in what they are putting into their bodies from a health and wellness perspective. Lackner believes that, as people reexamine their relationship with alcohol and alcohol consumption from a personal health standpoint, they are looking for an adult beverage alternative. Diana Eberlein, President of the Cannabis Beverage Association and Chair of the Coalition for Adult Beverage Alternatives, notes that "the consumer is more aware of what they put into their bodies now than they ever have been before." She believes that "health and wellness is a huge motivator for consumers" and identifies THC beverages as an attractive alternative to the traditional adult beverage.

Eberlein's statements lend insight into how young Americans may be engaging in social activities without the pressure of consuming alcohol. While data has yet to evolve to show consumer choice when presented with options of alcohol vs. hemp-derived THC beverages, data is clear that there is an increased demand for social engagement post-pandemic with in-person events thriving again. A survey by Deloitte found that millennials and Gen Z are leading the way in social spending, especially on experiences like dining, travel, and entertainment.<sup>13</sup> This is the same subset of the consumer population that appears to favor cannabis beverages. This point, coupled with a downward trend of alcohol consumption and an upward trend in interest in personal wellness, suggest that hemp-derived THC beverages may become an adult beverage of choice in social settings for young adults.

## **Normalization of THC and Beverage Approachability**

Across America, public perception of cannabis has shifted. There is overwhelming support for cannabis legalization, greater acceptance of cannabis use, and a lower perceived risk of consuming cannabis on a regular basis.<sup>14</sup> The majority of states have medical marijuana programs, and 24 states have legalized marijuana for adult use. Eberlein argues that a significant majority

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<sup>12</sup> <https://www.reuters.com/world/us/breaking-grass-ceiling-pot-firms-rethink-strategy-young-women-lead-cannabis-use-2024-10-22>

<sup>13</sup> <https://www.deloitte.com/global/en/issues/work/content/genz-millennialsurvey.html>

<sup>14</sup> <https://www.pewresearch.org/short-reads/2024/04/10/facts-about-marijuana/>

of Americans are comfortable with the legalization of marijuana and that the “[THC] beverage has continued to normalize cannabis consumption.” She notes that consumer interests will continue to grow with greater acceptance of cannabis products.

As the acceptance of cannabis consumption increases, hemp-derived THC beverages provide an approachable and measured introduction into cannabis use. Dominguez identifies that the availability of hemp-derived beverages in familiar settings, alongside traditional adult beverage products, encourages curious consumers to act. Lackner agreed with the benefit of increasing the accessibility of hemp-derived beverages, stating that “low-dose products do not do well in dispensaries... but when they are put in places where there are other adult beverages as options, it becomes more normalized and an easier shopping experience for consumers.”

As a consumption method, beverages provide an additional comfort level for consumers, compared to smokeable flower or edibles. This is likely due to a perceived level of control with cannabis beverages, mirroring that of alcohol. Consumers may be more aware of their intake with the earlier and smoother onset of the cannabinoid. Cannabis beverages have the added benefit of cannabinoids being digested sublingually, allowing the dose to enter the bloodstream quickly as opposed to being digested through the digestive tract exclusively like edibles, which are well known for their delayed onset of effects. Cannabis beverages also have higher bioavailability and are absorbed more consistently than edibles. This can cut the onset time by at least half when comparing the two discreet, odorless products. This onset time is similar to that of alcohol, which is familiar to many consumers.

Epstein defines hemp-derived THC beverages as less intimidating and a “cannabis light” approach to consumption. The beverages are a “positive gateway to exploring cannabinoids without diving into the full regulated cannabis market,” she states. Not only are hemp-derived beverages approachable for new consumers, but Epstein highlights also that these beverages provide versatility for any consumer, saying “the trend towards micro-dosing and controlled dosing is only likely to grow as more people seek a balanced, daily-use cannabinoids option.”

The confidence consumers have in a consistent and measured experience when consuming lower-dose hemp-derived THC beverages is critical to their success. “Low-dose products align with growing consumer interest in moderation and control over psychoactive experiences,” Epstein says. Eberlein echoes the importance of a consistent onset and predictable offset when consuming hemp-derived THC beverages, detailing regular concerns of cannabis consumers around the “inability to control the experience or measure the dose” with other cannabis products. These components will be major factors in determining the long-term success of the hemp-derived THC beverage category.

## **Better Products and Controlled Experiences**

Prioritization of product composition and quality beverages through taste and innovation have been attributed as drivers of success for hemp-derived beverages. The advancements and dedication to consistency help to bring hemp-derived THC beverages in better alignment with other adult beverage options.

Elevating consumer experience through taste has been a focus of hemp-derived beverages. “Flavor really, really matters,” Dominguez says, noting that the most successful brands will separate themselves by focusing on taste. Epstein adds that the enhanced focus on product integrity of hemp-derived THC beverages has contributed to the advancement of its flavor profiles, “allowing these beverages to appeal to the modern consumer accustomed to quality and variety in their beverages.” The taste profile of hemp-derived THC beverages also aligns well with the changing consumer demands of beverages in general. As Lackner points out, there has been a “changing American palette from bitter to sweet” over the past 20 years, referencing the shift from bitter IPAs to sweeter seltzers and fruit-forward wines within the greater adult beverage market. “It’s really good timing, serendipitous for a lack of a better term,” Lackner concludes.

As in any industry, innovation is integral to achieving long-term success. The ability to innovate outside of more strict regulatory frameworks is a key factor in the development of more consistent and enjoyable products. Lackner spoke about the inherent opportunities for creativity and innovation in beverages in general, lending to more exciting variations and formulations within the hemp-derived beverage category. Epstein points out that operating outside of traditional regulatory structure has encouraged innovation, allowing hemp-derived beverages to “adapt, test, and release new formats and formulations at a much quicker pace.” Leading companies have also leveraged advancements in emulsion technologies, which allow for THC to be infused into beverages, which has resulted in higher-quality products that are more consistent and reliable for consumers.

There is plenty of evidence to support Lackner’s and Epstein’s point. Over regulation has been known to hamper innovation across any industry. However, what may be more importantly attributed to the lack of regulatory oversight is the current competition observed in the hemp-derived THC beverage space. The market is saturated with independent beverage producers, well-known marijuana producers and alcoholic beverage producers alike. As with any industry, competition breeds innovation, as well as quality.

By paying greater attention to product quality and integrity and leveraging technological advancements to help design a better and more consistent product, hemp-derived THC beverages are driving repeat customers, a point Dominguez underscores.

## **Integration with Alcohol Infrastructure**

The quick expansion and potential of this new beverage category did not go unnoticed by large traditional beverage makers. For example, in late 2018, AB InBev, the world's leading brewer with portfolio companies like Budweiser, partnered with Tilray, a leading marijuana company, to begin researching interest and availability of CBD and THC-infused beverages. Constellation Brands, known for Corona and Modelo, followed suit with a heavy investment in Canopy Growth Corporation, a leading marijuana company, to develop and distribute marijuana-infused drinks. Molson Coors also entered into a joint venture with Hexo Corp to create Truss Beverages, a line of marijuana-infused drinks for the Canadian market. Partnerships between the cannabis and alcohol industries have proven to be the primary solution for entering the hemp-derived THC beverage market. One of the largest reasons for the integration of the alcohol infrastructure is distribution pathways.

"Hemp-derived beverages have benefitted from aligning with the existing alcohol infrastructure, which is familiar to both consumers and retailers," Epstein says. "This model has allowed for rapid distribution and made these products available in mainstream retail locations, contributing to their quick expansion." Dominguez agrees, adding that another benefit of the adult beverage supply chain is its focus on quality assurance, quality control, and risk mitigation of a regulated product.

The commonalities between the two industries are never-ending, particularly in supply chain management. Lackner verifies this. "[A THC beverage] fits on the shelf already, [it] fits on the truck already, [it] fits in the warehouse already, so when we start talking about a supply chain, these products already have a supply chain set up."

There is a compounding benefit in using the distribution network of alcohol companies for hemp-derived THC beverages. Established distribution networks come with not only pathways for sale, but highly regarded reputation with retailers. "When retailers like that get behind products, quality and safety is almost assumed, so consumer trust begins to form...If we're able to leverage that pathway, we can normalize cannabis consumption and use that momentum to help the other categories progress, as well," Eberlein states.

The utilization of alcohol infrastructure has led to faster market entry and expansion by leveraging existing alcohol infrastructure. Additionally, using existing production and distribution facilities lowers overhead and capital expenditures for cannabis companies. Ultimately, utilizing an alcohol brand's familiarity helps reduce overall stigma and increase social acceptance, a point underscored as an important element for continued growth in the hemp-derived THC beverage

market. While regulatory differences are sure to emerge over time, as state and federal policies react to the proliferation of this beverage market and the alcohol industry's involvement in it, the current integration of the two industries is considered the ideal way to reach a broad audience.

## **STATE AND FEDERAL RESPONSES**

The rise of hemp-derived THC beverages, alongside the proliferation of the hemp-derived cannabinoid marketplace in general, has created discord amongst state regulatory bodies and policymakers at all levels of government. Responding effectively with policy frameworks or appropriate regulatory structures remains a challenge. Currently, there are many different approaches to address this growing industry, including states creating new regulatory and licensing frameworks, all-out bans on hemp-derived THC products, and folding hemp-derived THC products into current, state-regulated marijuana frameworks.

In Minnesota, for example, legislators passed Minnesota Statute 151.72 in 2022, which allows for the sale of hemp-derived edible cannabinoid products. The legislation paved the way for the legal sale of hemp-derived THC products, particularly hemp-derived THC beverages, in various retail outlets, including openly in bars and taverns. Notably, this legislation was passed in advance of adult use legislation, shedding light onto the social acceptability of these products. As Minnesota begins to embark on their new adult use marijuana market, the hemp-derived THC beverage industry is thriving and likely to be a competitor for adult use retailers in sales for low-potency products.

On the other side of the spectrum, in California, Governor Newsom recently announced emergency regulations that ban all THC-containing hemp products regardless of product composition or type. This ban includes hemp-derived THC beverages and places additional limitations on non-THC hemp-derived products like CBD. The ban was challenged by the industry, but ultimately upheld by the courts.<sup>15</sup> This legal victory for California's governor may set precedent for other states to follow.

At the federal level, an amendment introduced by Congresswoman Mary Miller (R-IL) during the 2024 Farm Bill draft discussions proposed to change the federal definition of hemp once again, legalizing only non-intoxicating cannabinoids that are derived nat-

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<sup>15</sup> <https://www.gov.ca.gov/2024/10/11/court-shuts-down-industry-attempt-to-block-enforcement-of-californias-hemp-regulations/#:~:text=The%20new%20regulations%20for%20hemp,servings%20to%20five%20per%20package>

urally from the hemp plant, while essentially banning any intoxicating hemp or hemp-derived THC products. This would likely aid in the FDA's enforceability, which would threaten the current industry.

Policy debates around legal marijuana and hemp-derived THC products will surely carry on over the coming years. What is becoming apparent, however, is that a one-size-fits-all approach, whether a total allowance or an all-out ban, may not be feasible. The rise of hemp-derived THC beverages and their seamless integration within similar consumer product industries outside of the regulated marijuana space may be showing us that a new approach is needed. This approach would focus more on the end product and its unique characteristics, dictating the appropriate framework and regulation.

In a recent report, *A Framework for Federal and State Hemp-Derived Cannabinoid Regulation*, released by the Reason Foundation, authors Michelle Minton and Geoffrey Lawrence detail a future regulatory landscape that incorporates hemp-derived cannabinoids and marijuana products and advocates for a high- and low-potency approach. In this framework, high-potency products must adhere to higher standards around potency disclosures and risk warnings, and low-potency products should adhere to general consumer goods standards. An advantage of this perspective is it reinforces a greater focus on the final product when designing or refining regulatory approaches related to marijuana and hemp products across the spectrum.

# Conclusion

An examination of the factors that have contributed to the rise of the hemp-derived THC beverage market provides needed insight. It underscores both the challenges and new opportunities for cannabis products within the context of changing consumer preference and the further normalization of THC consumption overall. It may also provide valuable lessons into how best to approach the evolving hemp and marijuana industries at a time where domestic policy is constantly changing.

The present moment presents an opportunity to rethink the way we look at both marijuana products and hemp-derived cannabinoid products. Recognizing the differences in the final form of all consumable THC products, both marijuana and hemp-derived, and the similarities between THC products and their non-THC counterparts can guide the development of best policy practices.

While, historically, most regulated marijuana products have been lumped under a similar umbrella for the purpose of regulation, hemp-derived THC beverages have disrupted this paradigm. Possibly, this disruption should be looked at as a trend that could generate the creation of more flexible regulatory frameworks that provide certain allowances or create opportunities to leverage synergies, like the alcohol infrastructure, to better serve the consuming public. A product-level style approach to marijuana and hemp regulation could also help facilitate the transition of state-regulated markets into a future where federal legalization or rescheduling of marijuana leads to the emergence of full interstate commerce opportunities for all cannabis products.

Though consumer health and safety will also remain top priorities as the bedrock of all regulated marijuana frameworks, taking opportunities to be proactive in configuring more adaptive regulatory frameworks could help address many of the perceived inequities and criticisms of the current regulatory system. Importantly, there is no single, current policy recommendation to be made regarding the hemp-derived THC beverage market, or the hemp-derived cannabinoid market more generally. States will continue to seek policy solutions within their bounds, and the federal government may override those solutions or, perhaps, celebrate them. What remains true is that consumers are interested in these products. However the policies evolve, the emergence of the hemp-derived cannabinoid market demonstrated that high-potency cannabis products, a tenet of the traditional marijuana industry, are not the only viable product category in appealing to consumers.



The rise of the hemp-derived THC beverage market thus remains a fascinating case study in how retail aspects and market delivery of a product can capture the attention and desire of consumers. Meeting consumers where they are has long been a foundational aspect of successful business strategy. Recognizing these best practices and observing them in real time through the expansion of hemp-derived THC beverages can help consumers, the industry, and policymakers alike.

The launch of state-legal marijuana and the subsequent introduction of hemp-derived cannabinoids like hemp-derived THC beverages is a great policy experiment. In retrospect, there will undoubtedly be numerous instances where policy failed to meet expectations or where even the most well-intentioned efforts fell short. To end with a quote from Pamela Epstein, “This isn’t a knock on where we’ve been; it’s just a knock of opportunity for change.”

## About the Author



Tyler Klimas is the founder of Leaf Street Strategies and the former chief cannabis regulator for Nevada’s medical and adult-use cannabis marketplaces. As the first executive director appointed to Nevada’s cannabis regulatory agency, he oversaw the state’s rapid growth into a billion-dollar retail industry. Klimas also played a key role in the establishment of the highly successful Cannabis Regulators Association (CANN-RA), a non-profit organization comprised of chief cannabis regulators from North America and Europe. He served as its president, significantly expanding the association’s footprint and engagement efforts with U.S. federal agencies and members of Congress in Washington, D.C. Klimas also spent time as a federal lobbyist on Capitol Hill, where he led successful coalition-building and advocacy efforts on behalf of public and private sector entities.