

# Change to Federal Definition of Hemp and Implications for Federal Enforcement

December 3, 2025

On November 12, 2025, Congress and President Trump enacted a full-year FY2026 Agriculture appropriations act (P.L. 119-37, [Division B](#)), which contained a provision that reimposes federal controls over certain hemp products.

Both marijuana and hemp are varieties of the cannabis plant, and until 2018, hemp was considered to be marijuana as defined under the [Controlled Substances Act](#) (CSA). From 1970 until 2018, the federal government's definition of *marijuana* included hemp and its derivatives, and widespread hemp production was generally prohibited. Under the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334), Congress amended [the CSA definition of marijuana](#) to reflect the differences in the chemical and psychoactive properties between hemp and marijuana, but it referred *only* to the level of delta-9 tetrahydrocannabinol (THC) to distinguish between them and not the other cannabinoids found within the cannabis plant. Some interpreted this definition of *marijuana* and the [new federal definition of hemp](#) to mean that products containing *less than 0.3% delta-9 THC in addition to* other psychoactive compounds would not be considered marijuana and would legally be considered hemp—the so-called [farm bill loophole](#).

## Hemp as Marijuana Prior to 2018

In 1970, [the CSA](#) classified cannabis and its derivatives as [Schedule I controlled substances](#). Thus, their cultivation, distribution, or possession was prohibited—except in the context of approved research studies. This classification largely remained unchanged in the following decades unless [certain products or derivatives were specifically exempted or listed in other schedules](#).

While the federal government has maintained marijuana as a Schedule I substance, states have established a range of laws and policies allowing for the medical and recreational use of marijuana. [Most states have deviated from across-the-board prohibition of marijuana](#), and most have laws and policies allowing for some cultivation, distribution, and possession of marijuana or low-THC cannabis.

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IN12620

## The 2018 Farm Bill

The 2018 farm bill carved out hemp from the CSA definition of *marijuana* and also defined *hemp*. As a result, hemp and hemp-derived products at or below the 0.3% delta-9 THC threshold were no longer regulated as Schedule I controlled substances. Due to this change, registration with the Drug Enforcement Administration (DEA) was no longer required to cultivate or handle hemp and hemp-derived products. However, hemp remained subject to U.S. Department of Agriculture and Food and Drug Administration (FDA) regulation. Further, it remained subject to DEA scrutiny due to the nature of cannabis and methods of production.

## Proliferation of Hemp Cannabinoid Products

In the years following the 2018 farm bill, products containing cannabinoids (such as delta-8 THC) were sold across the United States. These products were sold in a variety of formats (e.g., gummies, drinks, candies), and some were packaged in containers that were similar to existing snack food brands. Both FDA and health professionals issued warnings about these products and their potentially harmful effects. FDA has also issued warning letters to certain companies that were reportedly illegally selling cannabis products that did not comply with the Food, Drug and Cosmetic Act (FDCA) or FDA regulations, citing concerns such as the availability of some of these products to children. Despite some federal efforts, many of these products still remain on the market.

## 2025 Change to Hemp Definition

In November 2025, P.L. 119-37 amended the definition of *hemp* under Title 7, Section 1639o, of the U.S. Code, changing the limit to a total THC concentration of less than 0.3% on a dry weight basis rather than only delta-9 THC. The Senate Appropriations Committee stated that the changes to the definition of *hemp* were made to prevent “the unregulated sale of intoxicating” hemp products in light of concerns surrounding the proliferation of hemp cannabinoid products. The new definition of *hemp* explicitly includes industrial hemp, which generally is hemp grown for non-cannabinoid purposes, while making a number of explicit exclusions, such as

- seeds from a cannabis plant that exceed a total THC concentration of 0.3%,
- intermediate hemp-derived products with more than 0.3% total THC concentration, and
- final hemp-derived cannabinoid products containing more than 0.4 milligrams of THC per container.

The new hemp definition also excludes hemp-derived cannabinoid products that contain cannabinoids that are not capable of being naturally produced by the cannabis plant or are capable of being naturally produced and were synthesized or manufactured outside the plant. The new definition will take effect November 12, 2026. Additionally, the law requires FDA within 90 days of enactment to publish lists of naturally occurring cannabinoids, THC class cannabinoids, and all known cannabinoids that have similar effects as THC class cannabinoids. FDA is also to further define the term *container*.

## Policy Implications for Hemp Industry and Law Enforcement

Hemp industry groups have expressed opposition to the changes to the hemp definition in P.L. 119-37 and prefer “regulation of hemp products.” While the change to the hemp definition will seemingly alter the legal status of many hemp products currently available on the market, it remains unclear if and how federal law enforcement will enforce the new prohibitions when the new definition goes into effect. In marijuana’s case, the federal response has largely been to allow states to implement their own marijuana laws despite the fact that state-regulated activities may violate the CSA. If intoxicating hemp products

persist on the market after the change to their legal status, it is possible they could be subject to the same [criminal and collateral issues as marijuana](#). It also remains to be seen whether FDA will pursue additional options to remove these items from the market. Both FDA and DEA may lack the resources to broadly enforce the laws prohibiting intoxicating hemp products on the market.

Congress may choose to exercise oversight over federal enforcement priorities regarding state-regulated cannabis activities. FDA ([under the FDCA](#)) and DEA ([under the CSA](#)), in coordination with the Department of Justice, have a range of civil and criminal remedies they may use in efforts to exercise control over these activities.

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