

CLOSING THE HEMP LOOPHOLE: THE NEW FEDERAL DEFINITION OF HEMP AND ITS IMPACT

DECEMBER 2025

INTRODUCTION

On November 12, 2025, President Trump signed H.R. 5371, the Continuing Appropriations and Extensions Act of 2026 (Extensions Act), into law to provide temporary funding for federal agencies for fiscal year 2025 and reopen the federal government after the longest government shutdown in U.S. history.¹ As part of this broader government funding package, Section 781 of the Extensions Act closed what lawmakers have referred to as the “hemp loophole” created by the Agriculture Improvement Act of 2018, which is known as the 2018 Farm Bill.² By narrowing the federal definition of hemp and identifying specific exclusions to the definition, the supporters of Section 781 believe that the change will protect public health. The hemp industry, however, is concerned that the change will destroy their operations. With the change to the federal hemp definition set to go into effect on November 12, 2026, various stakeholders are now attempting to find a common ground solution to the issue that addresses both public health concerns around hemp and hemp-derived products and the business concerns of the hemp industry.

2018 FARM BILL AND THE CREATION OF THE HEMP LOOPHOLE

Both marijuana and hemp are varieties of the cannabis plant, and until the passage of the 2018 Farm Bill, hemp was included in the federal definition of marijuana under the Controlled Substances Act (CSA)³ and classified as a Schedule I controlled substance.⁴ The 2018 Farm Bill legalized hemp by removing it from the definition of marijuana under the CSA and separately defined hemp as “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 tetrahydrocannabinol concentration** of not more than 0.3 percent on a dry weight basis.”⁵ Per the 2018 Farm Bill’s definition of hemp, any hemp or hemp-derived product at or below a 0.3 percent delta-9 THC⁶ threshold was no longer considered a Schedule I controlled substance. In the years that followed the enactment of the 2018 Farm Bill, manufacturers and retailers across the U.S. began producing and selling products containing various hemp-based cannabinoids, including, but not limited to, cannabidiol (CBD), delta-8 THC, and delta-10 THC.⁷ These hemp and hemp-derived products are sold in convenience stores, gas stations, smoke shops, and online retailers in a variety of formats, including gummies and other edibles, beverages, tinctures, vapes and smokables, and topical creams and lotions. The passage of the 2018 Farm Bill has enabled the hemp industry to grow into a \$28 billion industry and employ more than 300,000 people nationwide.⁸

¹ Pub. L. No. 119-37.

² Pub. L. No. 115-334.

³ 21 U.S.C. § 801, *et seq.*

⁴ As of this writing, marijuana is still classified as a Schedule I controlled substance under the CSA. However, the Trump Administration is considering reclassifying the substance as a Schedule III controlled substance. See Nathaniel Weixel, *Trump Says He is “Considering” Marijuana Reclassification*, THE HILL (Dec. 15, 2025), <https://thehill.com/policy/healthcare/5650130-marijuana-rescheduling-trump/>.

⁵ 7 U.S.C. § 1639o (emphasis added).

⁶ Delta-9 THC is the most abundant form of THC found in the cannabis plant. This cannabinoid is the main psychoactive compound in the cannabis plant and is responsible for the intoxicating effects associated with the consumption of marijuana. For more information about delta-9 THC, please refer to LAPPA’s “Explaining Cannabinoids” factsheet, available [here](#).

⁷ Cannabinoids are a group of chemical compounds found within the cannabis plant (*Cannabis sativa* L.) and the human body. For more information about the different types of cannabinoids and how they differ from delta-9 THC, please refer to LAPPA’s “Explaining Cannabinoids” factsheet, available [here](#).

⁸ Giulia Carbonaro, *Congress Rewrites Hemp Definition, Reshaping Cannabis Rules*, NEWSWEEK (Dec. 7, 2025), <https://www.newsweek.com/congress-rewrites-hemp-definition-reshaping-cannabis-rules-11162424>.



Amid the financial and commercial success of the hemp industry, there have been concerns among lawmakers, public health officials, and drug prevention advocates over how widely and easily accessible certain hemp and hemp-derived products, specifically those that can produce intoxicating effects similar to or more potent than delta-9 THC, have become and the lack of regulatory guidance on how these products should be sold and marketed. Currently, there are no federal age restrictions on who can purchase hemp and hemp-derived products, and the packaging of many of these products resemble snack food and candy brands in a way that is attractive to children, which has resulted in the

Federal Trade Commission, jointly with the Food and Drug Administration (FDA), sending cease-and-desist letters to certain companies.⁹ Licensed cannabis companies in states with regulated medical and/or adult-use cannabis programs have argued that the distributors and sellers of intoxicating hemp-derived cannabinoid products are undermining the regulated cannabis market by diverting consumers away from the regulated cannabis market and creating unfair price competition because the producers of hemp-derived products can sell their products at significantly lower price points as they do not bear the price of compliance associated with state licensure and product testing requirements.¹⁰ The licensed cannabis companies further argue that, by evading testing and safety requirements for cannabis products, intoxicating hemp distributors and retailers have eroded public confidence in the safety and legitimacy of legal cannabis products.¹¹ Even federal lawmakers who previously supported the passage of the 2018 Farm Bill, including its author Senator Mitch McConnell (R-KY), have criticized the hemp loophole, arguing that certain hemp companies have exploited it to create intoxicating substances.¹²

CLOSURE OF THE HEMP LOOPHOLE

Section 781 of the Extensions Act changes the federal definition of hemp to mean “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 **total tetrahydrocannabinols concentration (including tetrahydrocannabinolic acid [THCa])** of not more than 0.3 percent on a dry weight basis.”¹³ The Extension Act’s new definition of hemp explicitly includes industrial hemp, which is hemp grown for non-cannabinoid purposes, such as use in paper, rope, textiles, and the like, while making multiple explicit exclusions.¹⁴ Per the new definition, hemp does not include: (1) seeds from a cannabis plant that exceed a total THC concentration (including THCa) of 0.3 percent; (2) intermediate hemp-derived products with more than a 0.3 percent total THC concentration (including THCa); (3) final hemp-derived cannabinoid products containing more than 0.4 milligrams of total THC per container (including THCa); (4) any intermediate or final hemp-derived cannabinoid product that contains (a) cannabinoids that are not capable of being naturally produced by the *Cannabis sativa L.* plant, or (b) cannabinoids that are capable of being naturally produced by a *Cannabis sativa L.* plant but were synthesized or manufactured outside the plant; and (5) any intermediate or final hemp-derived cannabinoid product that contains any other cannabinoids that have similar effects, or are marketed to

⁹ *FTC and FDA Send Second Set of Cease-and-Desist Letters to Companies Selling Products Containing Delta-8 THC in Packaging Designed to Look Like Children’s Snacks*, FEDERAL TRADE COMMISSION (July 16, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-fda-send-second-set-cess-and-desist-letters-companies-selling-products-containing-delta-8-thc>; See also *Warning Letters for Cannabis-derived Products*, FOOD AND DRUG ADMINISTRATION, last updated Sept. 2025, <https://www.fda.gov/news-events/public-health-focus/warning-letters-cannabis-derived-products>.

¹⁰ *Agape Total Health Care Inc., et al. v. Golden Hour LLC, et al.*, No. 250803198 (Pa. Ct. Common Pleas, Phila. Cty. Filed Aug. 27, 2025); see also *New York Medical Cannabis Industry Association, Inc. v. New York State Cannabis Control Board, et al.*, No. 912347-25 (N.Y. Sup. Ct., Albany Cty. Filed November 19, 2025).

¹¹ *Id.*

¹² Jason Lalljee, *Killed “THC loophole” Could Hurt States, Businesses, Cannabis Advocates Say*, AXIOS (Nov. 15, 2025), <https://www.axios.com/2025/11/15/thc-hemp-products-ban-shutdown-bill>.

¹³ Pub. L. No. 119-37, § 781 (emphasis added).

¹⁴ *Id.*

have similar effects, on humans or animals as THC.¹⁵ The Extensions Act requires the FDA to publish the following information within 90 days of enactment: (1) a list of all cannabinoids known to the FDA to be capable of being naturally produced by the *Cannabis sativa L.* plant; (2) a list of all THC class cannabinoids known to the FDA to be naturally occurring in the *Cannabis sativa L.* plant; (3) a list of all other known cannabinoids with similar effects to, or marketed to have similar effects to, THC class cannabinoids; and (4) additional information and specificity about the term “container.”¹⁶ The Extensions Act currently defines the term “container” as the “innermost wrapping, packaging, or vessel in direct contact with a final hemp-derived cannabinoid product in which the final hemp-derived cannabinoid product is enclosed for retail sale to consumers, such as a jar, bottle, bag, box, packet, can, carton, or cartridge.”¹⁷

The Senate Appropriations committee stated that the changes to the definition of hemp were necessary to prevent “the unregulated sale of intoxicating hemp-based or hemp-derived products, including delta-8 [THC], from being sold online, in gas stations, and corner stores, while preserving non-intoxicating CBD and industrial hemp products.”¹⁸ Additionally, Senator McConnell stated that under the new definition “[i]ndustrial hemp and CBD will remain legal,” and that the new language “merely clarifies the original intent of the 2018 Farm Bill, rooting out the bad actors and protecting the growing hemp industry.”¹⁹ Senator Rand Paul (R-KY) objected to the inclusion of the hemp provision in the Extensions Act and attempted to get the provision removed from the bill, arguing that the revised definition of hemp would harm hemp farmers and small businesses, but the Senate rejected the removal with a 76-24 vote.²⁰

THE ENFORCEMENT OF THE NEW DEFINITION AND THE FUTURE OF HEMP

The changes to the federal definition of hemp will not go into effect until November 12, 2026, but in the meantime, many questions remain about how the change will be enforced and how it will impact the hemp industry. Since the enactment of the 2018 Farm Bill, states have enacted laws to regulate and/or ban certain hemp-derived cannabinoid products.²¹ While some states may amend their laws to align with the new federal definition of hemp, others may not, leading to a potential conflict of law. It is unclear at this time how the federal government will enforce the new hemp definition once it takes affect next year. If hemp products made illegal by the new federal definition remain on the market, it is possible that these products could be subject to the same criminal and collateral issues as marijuana and other Schedule I controlled substances. However, a report from the Congressional Research Services states that both the FDA and the U.S. Drug Enforcement Administration lack the resources to broadly enforce the laws prohibiting certain hemp products.²² It is possible that Congress, along with the U.S. Department of Justice (DOJ), may choose to exercise some discretion over the enforcement of federally illegal hemp products, especially in states where the products are legal under state law, in a similar manner to how the DOJ’s “Cole Memo”²³ and Congress’s Rohrabacher-Farr Amendment²⁴ apply to state legal

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Bill Summary from the Senate Committee on Appropriations-Majority for the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act of 2026 (Nov. 9, 2025),

https://www.appropriations.senate.gov/imo/media/doc/fy26_agriculture_rural_development_fda_bill_summary_-_majority.pdf.

¹⁹ 171 CONG. REC. S8129 (daily ed. Nov. 10, 2025) (statement of Sen. McConnell).

²⁰ Grace Yarrow, *Senate Rejects Paul’s Hemp Pitch*, POLITICO (Nov. 10, 2025), <https://www.politico.com/live-updates/2025/11/10/congress/senators-reject-pauls-hemp-plans-00646064>.

²¹ See James Dickinson, *Are Delta-8 THC and Delta-9 THC Legal? What States Don’t Allow*, O’FLAHERTY LAW (Feb. 3, 2025), <https://www.oflaherty-law.com/learn-about-law/are-delta-8-thc-and-delta-9-thc-legal-what-states-dont-allow>.

²² Zachary T. Neuhofer, et al., *Change to Federal definition of Hemp and Implications for Federal Enforcement*, CONGRESSIONAL RESEARCH SERVICE (Dec. 3, 2025), <https://www.congress.gov/crs-product/IN12620>.

²³ The “Cole Memo” provided that enforcement of the federal Controlled Substance Act against state-legal cannabis businesses was deprioritized to the extent that cannabis from legal states was not being trafficked to other states. Memorandum from James M. Cole, Deputy Attorney General, on Guidance Regarding Marijuana Enforcement to all U.S. Attorneys (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

²⁴ Rohrabacher-Farr Amendment, which Congress first enacted in 2014, limited federal prosecutors’ ability to enforce the federal Controlled Substances Act with respect to certain conduct involving medical cannabis. See H. Amdt. 748, 113th Cong. (2014).

medical and adult-use cannabis programs. Even if the federal government chooses to exercise some discretion over the enforcement of federal illegal hemp in states that choose to make such products legal, the hemp industry would still be affected by other laws governing Schedule I substances. For example, because the federal government has sole jurisdiction over interstate commerce, shipping hemp and hemp-derived products that are considered federally illegal across state lines would be prohibited. Additionally, Internal Revenue Code Section 280E, which prohibits federal tax deductions for businesses that partake in the trafficking of Schedule I and II controlled substances under the CSA, would apply even if a hemp company's business is legal in its home state.²⁵

Since the passage of the Extensions Act, the hemp industry and some federal lawmakers have been looking for ways to prevent the new hemp definition from going into effect in 2026. The U.S. Hemp Roundtable (USHR), a hemp business advocacy organization, issued a press release about the new federal hemp definition stating that it would “ban more than 95 percent of all hemp products.”²⁶ The USHR is currently asking Congress to push back the effective date for the new hemp definition for at least another year to give federal lawmakers time to develop and pass a federal regulatory framework for hemp and hemp-derived products.²⁷ On November 20, 2025, Representatives Nancy Mace (R-SC), Thomas Massie (R-KY), Zoe Lofgren (D-CA), and James Baird (R-IN) introduced the American Hemp Protection Act of 2025, which would repeal Section 781 of the Extensions Act.²⁸ This bill would preserve the 2018 Farm Bill's definition of hemp and provides no additional regulations on how hemp products can be marketed and sold. On December 15, 2025, Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) introduced the Cannabinoid Safety and Regulation Act (CSRA) which would keep certain hemp and hemp-derived products legal on the federal level and would also establish a regulatory framework for these products to protect public health and safety.²⁹ The bill would prohibit the sale of hemp-derived cannabinoid products to individuals under the age of 21 and require product manufacturers to adhere to labeling and packaging requirements to ensure that the products are not appealing to children, but accurately convey potency and potential risks associated with consumption.³⁰ The legislation also establishes THC limits for hemp-derived products, allowing up to five milligrams of THC per serving and a maximum of 50 milligrams of THC per container for edible, topical, and inhalable products; for beverages the maximum amount of THC per container would be 10 milligrams.³¹ Furthermore, the bill prohibits wholly synthetic cannabinoids that are not naturally occurring in the cannabis plant.³² Under the bill, states would have the right to set more stringent regulations on hemp and hemp-derived products, including banning the products altogether, but a state could not prevent a company from transporting such products through the state regardless of its individual laws.³³ In addition to regulating hemp and hemp-derived products, the CSRA: (1) establishes a new \$125 million underage cannabis use prevention grant program; (2) establishes a new \$200 million state cannabis-impaired driving prevention grant program and a nationwide anti-drugged driving campaign; and (3) provides \$150 million in research funds to develop a cannabis impairment standard for driving under the influence of cannabis.³⁴ A companion bill to the CSRA is expected to be introduced in January 2026 by Representative Morgan Griffith (R-VA).³⁵

²⁵ 26 U.S.C. § 280E.

²⁶ *It Ain't Over for Hemp*, U.S. HEMP ROUNDTABLE (Nov. 13, 2025), <https://hempsupporter.com/news/it-aint-over-for-hemp/>.

²⁷ *This is an Inflection Point for Hemp*, U.S. HEMP ROUNDTABLE (Nov. 24, 2025), <https://hempsupporter.com/news/this-is-an-inflection-point-for-hemp/>.

²⁸ H.R. 6209, 119th Cong. (1st Sess. 2025).

²⁹ S. 3474, 119th Cong. (1st Sess. 2025).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Ana Radelat and Brian Arola, *Hemp Industry Fighting Federal Ban with Bills to Regulate, Not Outlaw, THC Gummies and Drinks*, MINNPOST (Dec. 16, 2025), <https://www.minnpost.com/national/washington/2025/12/hemp-industry-fighting-federal-ban-with-bills-to-regulate-not-outlaw-thc-gummies-and-drinks/>.

CONCLUSION

The closure of the hemp loophole through the new federal definition of hemp seeks to address public health concerns and curb the proliferation of intoxicating hemp-derived products and also introduces significant uncertainty for the hemp industry. With enforcement challenges and potential conflicts between federal and state laws, the future of hemp in the U.S. remains unsettled. Ongoing legislative efforts underscore the hemp industry's urgency to find a balanced approach to regulating hemp that considers both the public health priorities and the needs of the hemp industry before the new definition's November 2026 effective date.

ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: <https://legislativeanalysis.org/>.

© Legislative Analysis and Public Policy Association - This project was supported by the Model Acts Program, funded by the Office of National Drug Control Policy, Executive Office of the President. Points of view or opinions in this document are those of the author and do not necessarily reflect the official position or policies of the Office of National Drug Control Policy or the United States Government.