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INSIGHT

Hemp Restrictions in FY2026 Agriculture Appropriations

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The House and Senate Committees on Appropriations approved FY2026 Agriculture appropriations bills that include provisions seeking to redefine the statutory definition of *hemp* to restrict the commercial production, sale, and distribution of certain hemp-derived cannabinoid products. House appropriators have expressed that the provision would close "the hemp loophole that has resulted in the proliferation of unregulated intoxicating hemp products." During Senate committee markup, Senator Mitch McConnell expressed that the existing hemp definition has resulted in "an unintended consequence that has allowed for intoxicating hemp-derived synthetic products to be made and sold," calling for changes to reflect "the original intent of the 2018 farm bill" by closing the loophole. The Senate-passed FY2026 Agriculture appropriations (H.R. 3944) included S.Amdt. 3070, which removed the provision relating to hemp. While further House action is pending, media reports indicate there are ongoing efforts to similarly strip the hemp provision from the House bill.

Both the House and Senate committee-reported bills (H.R. 4121, §759, and S. 2256, §781, respectively) would amend the statutory definition to clarify the types of hemp products considered lawful under the Domestic Hemp Production Program (7 U.S.C. §§1639o-s) administered by the U.S. Department of Agriculture (USDA). The current statutory definition was established in the Agriculture Improvement Act of 2018 (P.L. 115-334), which legalized hemp cultivation by excluding it from the definition of *marijuana* (21 U.S.C. §802(16)), thus removing federal regulation of hemp from the Controlled Substances Act (21 U.S.C. §§801 et seq.) and U.S. Drug Enforcement Administration (DEA) oversight. Congress also preserved the laws and regulations of the Food and Drug Administration (FDA) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§301 et seq.) regarding hemp-derived products (7 U.S.C. §1639r(c)), leading FDA to assert that consumer products containing cannabis and cannabis-derived cannabinoids under its jurisdiction are "unlawful." Both hemp and marijuana are from the *Cannabis sativa* plant.

In statute, hemp is currently defined 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 delta-9 tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis" (7 U.S.C. §1639o). There are hundreds of chemical compounds and cannabinoids in the cannabis plant.

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The House and Senate committee-reported bills would expand the existing statutory definition of hemp to include industrial hemp products and exclude certain hemp-derived cannabinoid products. These terms would be defined as follows:

- *Industrial hemp* would be defined as hemp grown for "non-cannabinoid" uses, including for fiber or for grain/seed (e.g., use as a whole grain, oil, cake, nut, or hull) or for immature plants (e.g., "microgreens or other edible leaf products"), as well as hemp grown for research purposes or as a viable seed to produce industrial hemp.
- *Hemp-derived cannabinoid product* would be defined as "any intermediate or final product derived from hemp (other than industrial hemp), that ... contains cannabinoids in any form; and ... is intended for human or animal use through any means of application or administration, such as inhalation, ingestion, or topical application."

The committee provisions would exclude from the hemp definition any cannabinoids that are non-naturally occurring and synthesized or manufactured compounds. The provisions also would exclude from the definition any viable seeds from the cannabis plant that exceed a total THC (including tetrahydrocannabinolic acid [THCA]) of 0.3% in the plant on a dry weight basis. Other changes would provide that the allowable limits of THC—the leading psychoactive cannabinoid in the cannabis plant—be determined on the basis of its total THC, including THCA, instead of delta-9 THC. This would codify the regulatory practice established in USDA's 2021 final hemp regulations. Other existing statutory language regarding hemp "derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not" would remain unchanged.

The committee provisions would exclude "any hemp-derived cannabinoid products containing ... quantifiable amounts" of THC as determined by the Secretary of Health and Human Services in consultation with the USDA Secretary. The House committee report would require that FDA establish a task force to "provide input on determining the level of quantifiable amounts of [THC] or other cannabinoids in hemp-derived cannabinoid products" and recommend "clear, science-based guidance to ensure product safety, consumer confidence, and regulatory clarity" for hemp-derived products (H.Rept. 119-172). In determining quantifiable amounts, the House committee states it "does not intend for industrial or non-intoxicating hemp-derived cannabinoid products with trace or insignificant amounts of THC to be affected." While neither the House nor Senate describes what constitutes an intoxicating hemp-derived cannabinoid product, these proposed changes would effectively redefine hemp to include any industrial hemp product but include only hemp cannabinoid products that are naturally occurring, non-synthetic, and nonintoxicating. The Senate committee report would require FDA to report on projected market impacts and stakeholder engagement, including information on uniform packaging, labeling, testing, and adverse event reporting requirements (S.Rept. 119-37).

Efforts to close the hemp loophole reflect recommendations of the Cannabis Regulators Association (CANNRA) and attorneys general in several states. CANNRA has identified three loopholes—0.3% loophole, THCA loophole, and derivatives loophole—that it asserts are being used to justify the sale of unregulated hemp-derived cannabinoid products despite some products being widely considered to be intoxicating and to pose public safety and health risks. The committee provisions would address these loopholes by requiring hemp be tested on the basis of total THC (including THCA) and excluding certain intoxicating hemp-derived cannabinoid products that would be considered controlled substances, subject to DEA enforcement. Industry groups contend the provisions would "dismantle" the U.S. hemp industry.

Similar action was debated but not enacted in the 118th Congress. The House Agriculture Committee added a nearly identical provision to its farm bill proposal (H.R. 8467, §10006, as amended and ordered to be reported); House appropriators added a related provision to FY2025 Agriculture appropriations (H.R. 9027, §760). While appropriations acts usually do not amend the *U.S. Code*, they may do so depending on the use of House rules.

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