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Changes to the Statutory Definition of Hemp and Issues for Congress

The FY2026 Agriculture Appropriations Act (P.L. 119-37, Division B) amends the statutory definition of *hemp* in 7 U.S.C. §1639o established by the Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334, §10113). The change to the definition—scheduled to go into effect 365 days after the enactment of P.L. 119-37 (November 12, 2026)—will likely have implications for hemp growers and U.S. Department of Agriculture (USDA) policy. This In Focus discusses congressional actions regarding the definition of hemp, the potential effect of the new definition on the hemp industry, and selected issues for Congress. For the potential implications on the broader consumer product industry and law enforcement, see CRS Insight IN12620, *Change to Federal Definition of Hemp and Implications for Federal Enforcement*.

Background

Hemp and marijuana are from the same plant species, *Cannabis sativa*. Generally, growers describe hemp and marijuana as from different varieties or cultivars of cannabis, although regulators have characterized them according to their chemical content. Among the chemical compounds of cannabis are cannabinoids. Cannabinoids include *tetrahydrocannabinols* (THCs), which are psychoactive cannabinoids naturally contained in cannabis or synthetically created in a lab. *Delta-9 THC* is the primary psychoactive compound in cannabis, though other THC compounds may be psychoactive. Other cannabinoids (such as cannabidiol, or CBD) generally are not considered to be psychoactive. For more on cannabinoids and cannabis plants, see CRS Report R44742, *Defining Hemp: A Fact Sheet*.

From 1970 to 2018, cannabis and its derivatives were generally included in the Controlled Substances Act's (CSA's; 21 U.S.C. §§801 et seq.) definition of marijuana and regulated as Schedule I controlled substances. The 2018 farm bill amended the definition of marijuana to exclude hemp, as defined in the act, thus allowing for hemp cultivation in the United States. In the legislation, Congress preserved the authority of the Food and Drug Administration (FDA) to regulate hemp-derived products.

The statutory definition of hemp from the 2018 farm bill is

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 tetrahydrocannabinolic [THC] concentration of not more than 0.3 percent on a dry weight basis.

Some have interpreted the 2018 farm bill definition to mean that products containing 0.3% delta-9 THC or less but that may contain significant amounts of other psychoactive compounds would not be considered marijuana and would legally be considered hemp. This interpretation has been referred to as the so-called “farm bill loophole.” In the years following the enactment of the 2018 farm bill, some stakeholders and policymakers raised concerns about the proliferation of products marketed as hemp that contain other cannabinoids, such as delta-8 THC. These products are sold in a variety of formats (e.g., gummies, drinks, candies), with some packaged in containers similar to existing snack food brands. Some of these products contain cannabinoids other than delta-9 THC at concentrations that can make the products intoxicating.

In the 118th Congress, legislation was introduced to amend 7 U.S.C. §1639o to include a total THC limit, rather than delta-9 THC only, and add restrictions on potentially intoxicating cannabinoid products. The House Agriculture Committee approved a farm bill (H.R. 8467 as amended and ordered to be reported), which would have amended the definition of hemp as described above (§10006). The House Appropriations Committee included a related provision in its FY2025 Agriculture appropriations bill (H.R. 9027, §760). These proposals were not enacted into law.

In the 119th Congress, both the House and Senate committee-reported Agriculture appropriations bills contained hemp provisions that resembled those considered in the 118th Congress (H.R. 4121, §759, and S. 2256, §781), such as including a limit of total THC and adding restrictions on potentially intoxicating cannabinoid products. Following House passage of H.R. 3944, the Senate amended the bill by adding the Senate-reported Agriculture appropriations bill (S. 2256). Prior to passage, the Senate adopted S.Amdt. 3070 to remove the bill's hemp definition provision. Ultimately, Congress passed the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (H.R. 5371), which amended the statutory definition of hemp as described below. An amendment (S.Amdt. 3941) to remove the hemp provision was tabled during consideration of the bill.

Changes to the Definition of Hemp

The statutory definition of hemp after the enactment of P.L. 119-37, Division B, §781, in part is

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 [THC] concentration (including tetrahydrocannabinolic acid [THCA]) of not more than 0.3 percent on a dry weight basis.

While the 2018 farm bill definition of hemp contains a limit of 0.3% *delta-9 THC* on a dry weight basis, the new hemp definition includes a *total THC* concentration of not more than 0.3% on a dry weight basis. This change reflects the fact that *delta-9 THC* is not the only potentially intoxicating THC in the cannabis plant (e.g., *delta-8 THC*).

Inclusion of Industrial Hemp

- The new hemp definition explicitly includes *industrial hemp*. Industrial hemp is defined in P.L. 119-37 as hemp grown for the use of the stalk, whole grain, oil, cake, nut, hull, or any other non-cannabinoid derivative of the seeds. It also includes hemp used for fiber or for immature plants (e.g., microgreens or other edible leaf products). Hemp that is grown for research purposes and does not enter the stream of commerce is also included.

Exclusions from the Definition of Hemp

The new definition of hemp contains exclusions. To restrict the distribution of certain hemp-derived cannabinoid products, the new statutory definition for hemp excludes

- Viable seeds from a cannabis plant that exceed a total THC concentration, including THCA, of 0.3% on a dry weight basis.
- Any *hemp-derived cannabinoid products* (whether intermediate or final) that contain cannabinoids that “are not capable of being naturally produced” by a cannabis plant.
- Any hemp-derived cannabinoid products (whether intermediate or final) that contain cannabinoids that “are capable of being naturally produced” but were “synthesized or manufactured outside the plant.”
- Intermediate hemp-derived cannabinoid products (products either not in their final form or products marketed to be added to or mixed with another substance prior to use) that contain more than 0.3% combined total THC and other cannabinoids with similar effects.
- Final hemp-derived cannabinoid products that contain greater than 0.4 milligrams combined total per *container* (i.e., the innermost packaging in direct contact with a final hemp-derived cannabinoid product for retail sale) of total THC and other cannabinoids with similar effects.

As of the effective date of the new definition (November 12, 2026), products excluded by these provisions are not to be deemed hemp products and are instead to be subject to regulation under the CSA as marijuana. For more on legal

considerations surrounding the new hemp definition, see CRS Legal Sidebar LSB11381, *Changes to the Federal Definition of Hemp: Legal Considerations Under the Controlled Substances Act*.

FDA Publication

P.L. 119-37 requires FDA to consult with relevant federal agencies and publish within 90 days of enactment

- a list of all cannabinoids that are known to FDA to be capable of being naturally produced in a cannabis plant based on peer-reviewed literature,
- a list of THC class cannabinoids known to FDA to be naturally occurring in the plant,
- a list of all other known cannabinoids with similar effects to (or marketed to have) THC class cannabinoids, and
- additional information about the term *container* as defined in the law.

Issues for Congress

A variety of stakeholders have advocated for various federal definitions of hemp. Prior to the enactment of P.L. 119-37, the Cannabis Regulators Association and attorneys general in several states expressed a desire for Congress to amend the statutory definition of hemp along the lines of P.L. 119-37. Conversely, hemp industry groups have expressed opposition to the definitional changes in P.L. 119-37 and prefer “regulation” of the market of hemp-derived consumer products.

Congress may consider whether or not to further amend the statutory definition of hemp. For example, one bill, H.R. 6209, would repeal the changes to the definition of hemp in P.L. 119-37. Other bills, such as S. 2112, would amend the definition of hemp to allow up to a 1% *delta-9 THC* concentration on a dry weight basis and make changes to testing and travel requirements. Additionally, one bill (S. 3474) would regulate hemp-derived cannabinoid products through FDA. In the 118th Congress, some Members introduced legislation that would have created regulatory pathways for products using extracts from hemp, such as food containing CBD (H.R. 1628) or for products used as a dietary supplement (H.R. 1629).

As USDA reworks federal regulations for hemp production over the next year before the effective date of the new hemp definition, Congress may consider the potential effects on farmers, law enforcement, and consumers. For example, Congress may conduct oversight of USDA implementation of the definitional changes in the department’s Domestic Hemp Production Program and the impact of the definitional changes on hemp producers.

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