Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Changes to the Federal Definition of *Hemp*: Legal Considerations Under the Controlled Substances Act

Updated December 22, 2025

The cannabis plant and products derived from cannabis may be subject to regulation under multiple provisions of federal and state law, including controlled substances laws, agricultural laws, and laws governing consumer products such as food, drugs, and cosmetics. One regulatory framework that may apply to cannabis products is the federal Controlled Substances Act (CSA). Under federal law, cannabis and its derivatives are generally classified as either *marijuana* or *hemp*. Marijuana is a controlled substance subject to stringent regulation under the CSA, while hemp is not a controlled substance. The CSA also separately regulates tetrahydrocannabinols (THC), other than "[THC] in hemp."

In November 2025, the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (Pub. L. No. 119-37), narrowed the definition of *hemp*. Once the amendment takes effect, some cannabis products that were previously legally classified as hemp will no longer fit that definition and will instead be classified as marijuana or CSA-regulated THC. This Legal Sidebar provides an overview of the change to the legal definition of *hemp* and its implications for regulation of cannabis products under the CSA, then discusses related legal considerations for Congress.

Cannabis and Its Derivatives

Botanically, hemp and marijuana are different varieties or cultivars of the same plant species, *Cannabis sativa*. The botanical classification of cannabis may differ from its legal classification under federal law, so a plant or other product that is botanically classified as hemp may be legally deemed to be marijuana, or vice versa.

Cannabis-derived products take numerous forms and have various uses. Chemicals found in cannabis, known as cannabinoids, may have physiological or psychoactive effects. Thus, the cannabis plant or products containing cannabinoids may be used for medical and recreational purposes. Delta-9 THC is the primary cannabinoid that produces the "high" associated with marijuana use. Delta-9 THC and other psychoactive cannabinoids may be extracted from the cannabis plant or synthesized in a lab and included

Congressional Research Service
https://crsreports.congress.gov
LSB11381

in products such as food, drinks, and vape cartridges. Another cannabinoid, cannabidiol (CBD), is not intoxicating but is an active ingredient in a drug approved by the U.S. Food and Drug Administration (FDA) and has been marketed in numerous other consumer products. Hulled hemp seeds, hemp seed protein powder, and hemp seed oil have been approved as food additives by FDA (cannabinoids such as CBD and THC have not). Hemp stalks and fibers are used in a range of products including textiles, spun fibers, paper, and construction and insulation materials.

As noted, cannabis and its derivatives may be subject to multiple, potentially overlapping federal and state legal regimes. This Legal Sidebar focuses on cannabis regulation under the CSA. Other CRS products discuss cannabis regulation under the Federal Food, Drug and Cosmetic Act and by the U.S. Department of Agriculture, policy considerations related to the amendment of the definition of *hemp*, and legal and policy implications of the divergence between federal and state marijuana laws.

Cannabis Regulation Under the CSA

In 1970, Congress enacted the CSA as a unified legal framework to regulate drugs and other substances deemed to pose a risk of abuse and dependence. The CSA applies to certain medical and recreational drugs and aims to protect public health from the dangers of controlled substances while also ensuring that patients have access to pharmaceutical controlled substances for legitimate medical purposes. The Act contains both registration provisions that regulate authorized activities involving controlled substances and criminal trafficking provisions that impose penalties for illicit activities. The manufacture, distribution, and possession of controlled substances in violation of the CSA are crimes that may be punished by fines and imprisonment.

Substances become subject to the CSA through placement in one of five lists, known as Schedules I through V. Either Congress (by legislation) or the Drug Enforcement Administration (DEA) (by rulemaking) can alter the status of a substance under the CSA by adding a substance to one of the schedules, moving it to a different schedule, or removing the substance from control. A lower schedule number carries greater restrictions, meaning that controlled substances in Schedule I are subject to the most stringent controls. Placement in Schedule I reflects a finding that a substance has a high potential for abuse, no currently accepted medical use, and "a lack of accepted safety for use ... under medical supervision." Because Schedule I controlled substances have no accepted medical use, they may not legally be dispensed for medical purposes. By contrast, controlled substances in Schedules II through V have accepted medical uses and pose progressively lower risks of abuse and dependence. Unlike substances in Schedule I, those substances may be dispensed by prescription for medical purposes. No controlled substances may legally be used for recreational purposes.

Congress placed marijuana in Schedule I when it enacted the CSA and also separately controlled THC in Schedule I. Other than the exceptions discussed below, the federal Schedule I status of marijuana and THC has not changed since the CSA was enacted.

The CSA defines *marijuana* to include the cannabis plant and its derivatives unless an exception applies. (The statute as enacted used the spelling "marihuana"; the CSA currently uses both spellings interchangeably.) Prior to 2018, the CSA excepted from the definition of *marijuana* the mature stalks of the cannabis plant; the sterilized seeds of the plant; and fibers, oils, and other products made from the stalks and seeds. In 2018, Congress enacted the Agriculture Improvement Act of 2018, Pub. L. No. 115-334 (2018 farm bill), which added a new exception to the definition of *marijuana* for products that meet the legal definition of *hemp*. The 2018 farm bill also provided that the CSA control of THC excludes "[THC] in hemp."

The 2018 farm bill, as codified at 7 U.S.C. § 1639o, defined *hemp* to include the cannabis plant or any part of that plant with a delta-9 THC concentration of not more than 0.3% by dry weight volume. Thus, following enactment of the 2018 farm bill, cannabis and cannabis derivatives containing more than 0.3%

delta-9 THC remained classified as marijuana and were subject to CSA regulation, while products falling at or below the delta-9 THC threshold were generally classified as hemp and were not controlled substances.

The 2018 farm bill defined *hemp* based only on the concentration of delta-9 THC, meaning that cannabis-derived products that contained other cannabinoids were arguably exempted from CSA control so long as they did not exceed 0.3% delta-9 THC. The exception from CSA control applied to products containing non-intoxicating CBD. It also potentially applied to some psychoactive compounds such as delta-8 THC, delta-10 THC, and THC acetate ester (THCO), creating what some viewed as a "loophole" in the regulation of psychoactive cannabinoids. DEA interpreted the exception for "[THC] in hemp" to apply only to chemicals that occur naturally in the cannabis plant. Delta-8 THC and delta-10 THC occur in the cannabis plant in small amounts and can also be synthesized from other cannabinoids. By contrast, THCO does not occur naturally in the cannabis plant, so DEA took the position that THCO did not qualify for the exception for "[THC] in hemp" and thus remained subject to CSA control of THC. Some cannabis industry participants opposed that interpretation, and one federal appeals court held that THCO fell within the 2018 farm bill's definition of *hemp* and was not subject to CSA control. Before DEA issued its guidance on THCO, another federal appeals court had held that delta-8 THC fell within the definition of *hemp*.

Amendment to the Definition of *Hemp*

On November 12, 2025, Congress enacted and the President signed Pub. L. No. 119-37. Section 781 of the Act amended the definition of *hemp*. The amended provision defines *hemp* to include cannabis and cannabis derivatives "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* set a threshold based only on the concentration of *delta-9 THC*, the amended definition instead sets a threshold based on *total THC concentration*, including compounds such as delta-8 THC, delta-10 THC, and THCO.

The amended provision expressly includes in the definition of *hemp* "industrial hemp" grown for purposes of producing non-cannabinoid products including stalks, fibers, whole grains, oils, and edible greens. It also enumerates certain exclusions from the definition of *hemp*:

- Viable seeds from a cannabis plant if the plant exceeds a total THC concentration, including THCA, of 0.3% on a dry weight basis;
- Hemp-derived cannabinoid products containing cannabinoids that (1) are not capable of being naturally produced by a cannabis plant *or* (2) are capable of being naturally produced by a cannabis plant and were synthesized or manufactured outside the plant;
- Intermediate hemp-derived cannabinoid products containing more than 0.3% total THC (including THCA) and "any other cannabinoids that have similar effects (or are marketed to have similar effects) on humans or animals as a [THC] (as determined by the Secretary of Health and Human Services [HHS])"; and
- Final hemp-derived cannabinoid products containing greater than 0.4 milligrams combined total per container of total THC (including THCA) and "any other cannabinoids that have similar effects (or are marketed to have similar effects) on humans or animals as a [THC] (as determined by the [HHS Secretary])."

The Act defines *intermediate hemp-derived cannabinoid product* in part as a product derived from hemp and intended for human or animal use that "is not yet in the final form or preparation marketed or intended to be used or consumed by a human or animal." It does not separately define *final hemp-derived cannabinoid product*, but the phrase appears to refer to hemp-derived cannabinoid products in the final form marketed to end users for human or animal use.

The Act directs FDA, within 90 days of enactment, to publish lists of:

- All cannabinoids known to FDA that can be naturally produced by a cannabis plant;
- All THC class cannabinoids known to the agency to occur naturally in the plant; and
- All other known cannabinoids with similar effects to, or marketed to have similar effects to, THC-class cannabinoids.

FDA is also directed to publish within 90 days "additional information and specificity" about the term *container* as applied to final hemp-derived cannabinoid products.

The Act provides that the amendment to the definition of *hemp* shall take effect one year from the date of enactment.

Considerations for Congress

Overall, the effect of the amendment in Section 781 of Pub. L. No. 119-37 will be to narrow the definition of *hemp* under federal law and expand the universe of substances that are controlled under the CSA. Because hemp is carved out from the CSA definition of *marijuana*, and THC in hemp is carved out from CSA control of THC, the amendment will operate as an exception to the exceptions, meaning that covered hemp-derived cannabinoid products will be subject to CSA regulation as marijuana or THC. Some observers believe that the change in the law will have significant effects on the cannabis industry.

While the amendment to the definition of *hemp* changes the legal status of some cannabis products under the CSA, it is unclear how it will affect future CSA enforcement. Current marijuana regulation under divergent federal and state marijuana laws may provide some guidance on this question. In recent decades, a number of states have enacted laws relaxing state controls on marijuana and regulating the use of the substance for medical or recreational purposes. Marijuana remains a Schedule I controlled substance subject to stringent controls under federal law, and, notwithstanding changes to state laws, most activities involving medical and recreational marijuana violate the CSA.

There are two key reasons why the U.S. Department of Justice (DOJ) does not comprehensively enforce the CSA with respect to marijuana.

First, DOJ lacks the resources to prosecute all violations of the CSA and generally has not prioritized enforcement against small-scale violations or activities that comply with state law. A CRS report provides detailed discussion of federal policy concerning the federal-state divergence with respect to marijuana. It remains to be seen to what extent DOJ will prioritize CSA enforcement against products containing psychoactive cannabinoids other than delta-9 THC. If Congress wishes to affect DOJ enforcement priorities, it has the legal authority to increase or decrease funding or dictate how the agency may use appropriated funds.

Second, in each budget cycle since FY2015, Congress has passed an appropriations rider barring DOJ from using taxpayer funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." The appropriations rider has been interpreted to prohibit federal prosecution of state-legal activities involving medical marijuana, though it poses no bar to prosecution of activities involving recreational marijuana. To the extent products falling outside the definition of *hemp* will now be legally classified as marijuana, the appropriations rider would apply to those products to the extent they are used for medical purposes in compliance with state law. If Congress wanted to alter the scope of the appropriations rider, including modifying how it applies to hemp-derived cannabinoid products, it could do so by legislation.

Another consideration for Congress is that, to the extent hemp-derived cannabinoid products are classified as marijuana, any change to CSA regulation of marijuana would also apply to those products. On May 21, 2024, DOJ published in the *Federal Register* a notice of proposed rulemaking proposing to move

marijuana from Schedule I to Schedule III. On December 18, 2025, President Trump issued an executive order directing the Attorney General to take all necessary steps to expeditiously move marijuana from Schedule I to Schedule III. As of the date of publication of this Legal Sidebar, DOJ has not taken final action on the rescheduling proposal. Another Legal Sidebar outlines the legal consequences of rescheduling marijuana. Congress has broad authority to change the status of a controlled substance through legislation and could change the status of marijuana before or after DEA makes any final scheduling decision. Congress could choose to act with respect to marijuana generally or with respect to hemp-derived cannabinoid products in particular.

In addition to directing DOJ to reschedule marijuana, the December 2025 executive order also advocates for changes in the regulation of certain cannabis-derived products. The executive order states that "some full-spectrum CBD products will once again be controlled as marijuana under the CSA when [the hemp definition amendment] goes into effect because they contain THC levels above the per-container threshold set by that law." It thus directs executive branch officials to "work with the Congress to update the statutory definition of final hemp-derived cannabinoid products to allow Americans to benefit from access to appropriate full-spectrum CBD products while preserving the Congress's intent to restrict the sale of products that pose serious health risks." Congress has the authority to enact additional modifications to the definition of *hemp*. One recent proposal would repeal the November 2025 modification. Another proposal would provide for FDA regulation of cannabis and cannabinoid products.

Finally, the change to the federal definition of *hemp* may also affect state cannabis regulation. Federal and state cannabis laws generally operate independently, and both may apply simultaneously if there is no positive conflict between the two. However, the 2018 farm bill contains a provision that expressly prohibits states from regulating "the transportation or shipment of hemp or hemp products ... through the State." As discussed in a CRS report, there has been significant litigation over whether federal law preempts certain state hemp regulations. It remains to be seen whether and how narrowing the federal definition of *hemp* will affect that litigation. If Congress enacted legislation to change how hemp-derived cannabinoid products are regulated, that could also affect the pending litigation. If Congress wishes to preempt or not preempt certain state regulations of hemp, it also has the authority to amend the preemption provision.

Author Information

Joanna R. Lampe
Legislative Attorney

Disclaimer

as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.