

Federal Hemp Program Changes, An Expanded View

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Executive Summary

- In November 2025, President Donald Trump signed House of Representatives Bill (HR) 5371, which will effectively ban most consumable hemp-derived tetrahydrocannabinol (THC) products across the United States within the next year.
- Michigan has an established industrial hemp program; however, recent reductions in the number of registered growers have spurred the introduction of legislation to eliminate Michigan's program and move it to Federal oversight.
- The passage of this relatively recent Federal legislation will have a substantial impact on the industrial hemp industry, notwithstanding recent efforts to reclassify marijuana from a Schedule I to a Schedule III drug.

INTRODUCTION

Generally, the Federal Controlled Substances Act prohibits a person from knowingly or intentionally manufacturing, distributing, or dispensing, or possessing with intent to manufacture, distribute, or dispense, marijuana.¹ However, in 2018, this general prohibition was modified to exclude hemp. This allowed growers to cultivate hemp for industrial, food, and other applications, provided the level of THC was kept below certain thresholds.

On November 12, 2025, President Donald Trump signed legislation that effectively bans most consumable hemp-derived THC products across the United States. The provision was included in HR 5371, the spending bill that ended the most recent government shutdown, and it will take effect on November 12, 2026. The legislation significantly alters the hemp industry framework established under the 2018 Farm Bill and, by extension, Michigan's hemp program. This paper reiterates and expands on material presented in the Senate Fiscal Agency's OneFaB on the same subject.²

HISTORY AND CURRENT FEDERAL LAW

Early in US history, hemp was grown as an industrial cash crop; however, in 1937, the Marihuana Tax Act of 1937 was enacted in the US. The Act levied a tax on anyone who dealt commercially in cannabis, hemp, or marijuana. Except for a brief period during World War II, the Marihuana Tax Act effectively destroyed the hemp industry. After the Marihuana Tax Act was struck down by the United State Supreme Court in 1969,³ the US enacted the Controlled Substances Act of 1970, which classified cannabis as a Schedule I drug.¹

In 2014, Federal law was amended to allow institutions of higher education to grow or cultivate industrial hemp only for research purposes conducted under an agricultural pilot program or other agricultural or academic research and only if allowed under the laws of the state where the university or department was located and the research occurred.⁴ The term "industrial hemp", as

ⁱ This means that the drug or substance has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and that there is a lack of accepted safety for use of the drug or other substance under medical supervision.



used here, meant the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis.⁵

The 2018 Farm Bill (Agriculture Improvement Act of 2018) changed the legal status of hemp altogether by removing it from the Controlled Substances Act and defining it as an agricultural commodity.⁶ This action legalized the commercial production of hemp nationwide under a Federal regulatory framework overseen by the US Department of Agriculture (USDA). Essentially, the statute and associated regulations establish a national regulatory baseline for hemp production that focuses on licensing, land reporting, THC testing, and compliance. States and tribes may apply to administer their own programs, provided they meet or exceed Federal standards. To do so, a state or tribe must submit a hemp production plan to the USDA for approval. Required elements for a state/tribal plan include the following: 1) licensing procedures for producers, 2) land reporting requirements, 3) sampling and testing protocols for THC, 4) procedures for disposal and remediation of noncompliant plants, 5) compliance and enforcement mechanisms, 6) information-sharing requirements with the USDA for law enforcement access, and 7) certification of resources to ensure the state/tribe can administer the plan.⁷ If a state or tribe chooses not to administer a program, growers are subject to USDA's program unless State law prohibits cultivation.

After the 2018 Farm Bill was enacted, the "hemp" definition was interpreted by some to mean that products that contained 0.3% delta-9 THC or less and significant amounts of other THC isomers or psychoactive compounds were included within the definition. This effectively allowed the sale of cannabis products with isomers such as delta-8-THC, which evidently produces a marijuana-like high.⁸ In April 2025, the US House Committee on Oversight and Government Reform heard testimony regarding the proliferation of hemp-market products, including drinks and other snacks, that contained intoxicating cannabinoids.⁹

MICHIGAN HEMP LAW AND HEMP PROGRAM

In 2014, Michigan enacted the Industrial Hemp Research Act, which allowed the Michigan Department of Agriculture and Rural Development (MDARD) and colleges and universities to grow and cultivate industrial hemp for research purposes, and enacted legislation to exclude industrial hemp from the definition of "marihuana" within the Public Health Code.¹⁰ Later, Michigan enacted Public Act (PA) 641 of 2018. This Act renamed the Industrial Hemp Research Act to the Industrial Hemp Research and Development Act, allowed the commercial farming and processing of industrial hemp under a licensing and registration program for hemp growers and processor-handlers (in line with the Federal changes made in 2018), and authorized MDARD to establish and operate an industrial hemp licensing program.¹¹

In 2020, the Industrial Hemp Growers Act was enacted. The Act authorizes the Department to develop and submit to USDA an industrial hemp plan that complies with 7 USC 1639o to 1639s and, after approval, to use the plan to administer Michigan's industrial hemp program.¹² The Act again was updated in March 2021 to comply with the USDA's Final Rule.¹³ The MDARD updated Michigan's Hemp Production Plan on June 8, 2022.¹⁴ In February 2022, Governor Gretchen Whitmer transferred the authority to regulate industrial hemp processing to the Cannabis Regulatory Agency via Executive Order 2022-1.

RELEVANT PROVISIONS OF THE NEW FEDERAL LAW

Effective 365 days after its enactment, Section 781 of HR 5371 amends Section 297A of the Agricultural Marketing Act of 1946 (7 USC 1639o) to redefine the term "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" (emphasis added), including industrial hemp.¹⁵ Currently, that term means "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." The bill also excludes from the term "hemp" the following items:

- Seeds from a *Cannabis sativa* L. plant if the plant has more than 0.3% THC (including THCA) by dry weight.
- Intermediate hemp-derived products that contain a) cannabinoids not naturally produced by *Cannabis sativa* L.; b) cannabinoids that can occur naturally but were made or synthesized outside the plant; c) more than 0.3% total of THC (including THCA) and other cannabinoids with similar effects on humans or animals.
- Intermediate hemp-derived products marketed or sold as a final product or directly to consumers for personal or household use.
- Final hemp-derived products that contain a) cannabinoids not naturally produced by *Cannabis sativa* L.; b) cannabinoids that can occur naturally but were made or synthesized outside the plant; c) more than 0.4 mg total per container of THC (including THCA) and any other cannabinoids with similar effects.

While the bill does not change the mechanics of the USDA's Hemp Program itself, the definitional changes described above will have the following implications.

Reduced THC Limits. The bill effectively bans hemp products that contain more than 0.4 milligrams of total THC per container. For context, a typical hemp gummy or beverage contains 2.5 to 10 milligrams of delta-9-THC.

Legal Hemp Redefined. The legislation specifies that the 0.3% threshold will apply to total THC (including *delta-8 and other isomers*) as opposed to only delta-9 THC on a dry weight basis. This changes what qualifies as "hemp" under Federal law. Hemp products that have THC levels that exceed the specified limits are considered 'marijuana' and are illegal under Federal law.

Prohibited Products. The 'ban' will cover 1) intermediate hemp-derived cannabinoid products marketed or sold as a final product or directly to consumers for personal or household use; 2) products containing cannabinoids that are synthesized or manufactured outside of the cannabis plant or not capable of being naturally produced by it; and 3) all natural and converted THC forms (e.g., delta-9, delta-8, etc.) in consumable forms (drinks, gummies, etc.). It is probable that the 'ban' will apply to cannabidiol (i.e., CBD) products, which are nonintoxicating and are used by individuals for medical reasons.

Food and Drug Administration (FDA) Publication. The bill requires the FDA, within 90 days of the enactment, to publish lists of the following information: 1) cannabinoids known to FDA to be capable of being naturally produced by a *Cannabis sativa* L. plant, according to peer-reviewed literature; 2)



all naturally occurring THC-class cannabinoids; and 3) all other known cannabinoids with similar effects to, or marketed to have similar effects to, THC-class cannabinoids.¹⁶

IMPACTS

As noted in the preceding OneFaB on this subject,¹⁷ the legislation represents a substantial shift in Federal hemp policy with far-reaching consequences for manufacturers, retailers, farmers, and consumers. Reportedly, many of the products that meet the current THC thresholds do not meet the new ones. This means that many manufacturers and retailers will have to explore whether their products can be reformulated or draw down their business within the 365-day window.

The impact on Michigan may not be substantial, however. On the one hand, since Michigan's statutory framework for its hemp program is reliant on the old thresholds, new Federal thresholds mean that Michigan's hemp program will no longer meet Federal requirements. To continue maintaining its own hemp program, Michigan statute will need to be amended. On the other hand, the number of hemp growers registered in Michigan has dropped substantially. In May 2022, 80 growers were registered.¹⁸ As of December 2025, the number has dropped to 24.¹⁹

Some industry stakeholders have advocated shifting Michigan's program to a USDA-administered program. Legislation to do this has been introduced in the Michigan House and Senate.²⁰ Those bills would repeal the Industrial Hemp Growers Act, which would eliminate MDARD's authority to administer the hemp program. In that event, production of hemp in Michigan would be subject to a USDA plan.²¹ Any impact on Michigan also would depend on whether and to what extent Michigan's industry outputs are curtailed by the new thresholds. For example, if Michigan hemp is predominantly used for CBD and CBD derivatives and those compounds are affected by the ban, then the impacts may be increased.

Other pending legislation would take a different tack: establishing a framework for regulating hemp products in Michigan. Senate Bill 599 would enact the Industrial Hemp Processing Act, which would establish a licensing structure for the processing, packaging, transporting, distributing, and sale of consumable hemp products (i.e., edible substances, beverages, infused liquids, or similar products that contain a nonintoxicating cannabinoid and are intended for human or animal consumption, ingestion, or inhalation). The legislation also would repeal the Industrial Hemp Research and Development Act. The bill, and its companion legislation (Senate Bills 600 through 602), has passed the Senate as of this writing.²²

Complicating this issue are recent efforts to reclassify cannabis, from Schedule I to Schedule III.²³ A recent Executive Order announced that it would be the current administration's policy to increase research into medical cannabis and CBD, ordered the US Attorney General to complete rulemaking to rescheduling marijuana to Schedule III of the CSA expeditiously, and requires the President's staff 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".²⁴ Even if cannabis is reclassified, HR 5371's thresholds will still apply. Moreover, the President's order makes it clear that it must be implemented consistent with applicable law; accordingly, Congress, not the Executive Branch, will have to address issues that arise as a result of HR 5371's impact on the hemp industry.

State Notes
TOPICS OF LEGISLATIVE INTEREST
Winter 2026



¹ 21 USC § 841.

² Mann, Jeff, "Federal Hemp Program Changes", Senate Fiscal Agency OneFaB, December 15, 2025.

³ *Leary v. United States*, 395 US 6 (1969). The Act was later repealed by the Comprehensive Drug Abuse Prevention and Control Act of 1970.

⁴ 7 USC § 5940(a) (2016).

⁵ 7 USC § 5940(b)(2) (2016).

⁶ Agriculture Improvement Act of 2018, sec. 12619.

⁷ 7 USC § 1639p.

⁸ Rob Mentzer, "A loophole in federal marijuana law has led to the creation of new THC product", *NPR*, 1-4-2022 (Heard on *All Things Considered*).

⁹ "Restoring Trust in FDA: Rooting Out Illicit Products", Testimony before the US House Committee on Oversight and Government Reform, 4-9-2025.

¹⁰ Public Acts 547 and 548 of 2014, available at the MI Legislature website: <http://www.legislature.mi.gov>.

¹¹ Public Act 641 of 2018.

¹² MCL 333.29105.

¹³ See 86 Federal Register 5596, 1-19-2021.

¹⁴ "Michigan Hemp Production Plan v3. 6-3-2022", 6-8-2022. Available at: "Status of State and Tribal Hemp Production Plans for USDA Approval", United State Department of Agriculture Agricultural Marketing Service, <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review>.

¹⁵ The bill further defines 'industrial hemp' as generally as hemp (A) grown for the use of the stalk of the plant, fiber produced from a stalk, or any other non-cannabinoid derivative, mixture, preparation, or manufacture of the stalk; (B) grown for the use of the whole grain, oil, cake, nut, hull, or any other non-cannabinoid compound, derivative, mixture, preparation, or manufacture of the seeds of the plant; (C) grown for purposes of producing edible hemp leaf products intended for human consumption that are derived from an immature hemp plant that is grown from seeds that do not exceed the specified total THC concentration threshold; (D) that does not enter the stream of commerce and is intended to support hemp research at a university or an independent research institute; or (E) grown for the use of a viable seed of the plant produced solely for the production or manufacture of any material above.

¹⁶ The bill also requires the FDA to publish additional information and specificity about the term "container". The term means "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". This is relevant for determining allowable THC content in final hemp-derived products.

¹⁷ See note 2.

¹⁸ MDARD, electronic communication with the author, 5-31-2022.

¹⁹ MDARD, electronic communication with the author, 12-2-2025.

²⁰ See, e.g., House Bill 5095 (2025) and Senate Bill 608 (2025), available at the MI Legislature website: <http://www.legislature.mi.gov>.

²¹ 7 USC § 1639q.

²² The companion legislation would amend the Medical Marihuana Facilities Licensing Act, the Industrial Hemp Growers Act, and the Michigan Regulation and Taxation of Marihuana Act to eliminate references to the Industrial Hemp Research and Development Act. A full summary of the Senate-passed versions of these bills is available on the MI Legislature website, <http://www.legislature.mi.gov>.

²³ Schedule III drugs are classified as having a potential for abuse less than the drugs or other substances in Schedules I and II, a currently accepted medical use in treatment in the United States, and a potential for moderate or low physical dependence or high psychological dependence in the event of drug abuse.

²⁴ Executive Order 14370, December 18, 2025.