

Unintended Consequences of a Federal Hemp Ban

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Key Takeaways:

- A proposed federal “hemp ban” in the 2026 Agriculture Appropriations bill would prohibit not only intoxicating hemp products like delta-8 THC, but also nonintoxicating cannabinoids such as CBD, threatening the U.S. hemp industry and its supply chain.
- If implemented, the ban could devastate a \$28 billion industry, eliminate hundreds of thousands of jobs and disrupt state-legal hemp markets, with far-reaching consequences for farmers, retailers, manufacturers and researchers nationwide.
- Industry stakeholders should closely monitor legislative developments, engage with policymakers, and prepare for potential legal challenges or regulatory changes, as the next year will be critical for the future of hemp in the United States.

In the last few weeks, the hemp industry has faced an existential crisis in the form of a ban contained in the Fiscal Year 2026 Agriculture Appropriations bill (the “Bill”).^[1] Proponents of consumable hemp products say that the language, as written, will ban not just intoxicating synthetic hemp products like delta-8 THC and inhalable hemp products like THCA flower, but also nonintoxicating cannabinoids like CBD, CBN and CBG. Let’s break it down.

What does the language relating to “synthetics” mean? It means that hemp cannabinoids that do not exist naturally in the plant, like THC-O, will be banned, and cannabinoids that do exist naturally, but are synthesized or manufactured outside of the plant, like delta-8 THC (used to create inhalable vapes, edibles or topical products), will also be banned nationwide.

What is the impact of requiring consideration of “total THC” in the Bill?^[2] The Agriculture Improvement Act of 2018^[3] (the “Farm Bill”) that legalized “hemp” did not regulate cannabinoids outside of delta-9 THC, allowing manufacturers to create intoxicating products with other types of cannabinoids, like delta-8, delta-10, THC-O, and HHH, as long as they restricted delta-9 THC in such products to 0.3% THC or less in compliance with the Farm Bill. This language also allowed for the proliferation of THCA flower products like prerolls (THCA is the precursor to delta-9 THC and becomes intoxicating upon decarboxylation, a fancy word for heating the plant material to activate the compounds that release intoxicating THC). The requirement to now define hemp using “total THC” means that ALL cannabinoids found in products will count towards the THC limit in the Bill. Using “total THC” eliminates THCA flower because “total THC” would now include both THCA and THC. Likewise, other hemp products that use multiple types of cannabinoids to create intoxicating products without going over the 0.3% limit on delta-9 THC will now be considered “federally illegal”

regulated cannabis” as opposed to “federally legal hemp” under the Farm Bill.

What does the language say about nonintoxicating products containing cannabinoids like CBD?

Nonintoxicating products are in trouble too. Even with the change in the original Bill language under consideration from “no quantifiable THC” to an allowance of up to “0.4 milligrams of combined total per container of total THC,”^[4] CBD and similar nonintoxicating cannabinoids will no longer be considered legal hemp. This is because the language in the Bill requires compliance at every step in the process of making these products. To make CBD, there is a required intermediate step where the amount of THC is higher than the 0.4 milligrams limit. As such, there is no way to make these products and remain compliant with the Bill. According to the U.S. Hemp Roundtable, this Bill would kill an estimated \$11B in CBD sales alone, predicted for 2027.^[5]

What are the consequences of this language? There are almost too many to discuss in one article, but importantly, **there is a one-year implementation delay**, and as anyone who has worked in this industry can tell you, a lot can change in one year. During this time period, the hemp community will continue to push for responsible regulations in lieu of a ban.

What about all the regulated state markets like Minnesota, Georgia and Tennessee - will they comply? There are over forty (40) states with finished hemp product regulations including more than a dozen states with robust regulatory frameworks, including AL, CO, CT, FL, LA, NY, TN, MN, GA, KY, IA and VA. Time will tell how the states handle this new world, but it is possible that we are heading into “Cannabis 2.0.” Despite the federal illegality of regulated cannabis under the Controlled Substances Act (CSA), states like Colorado, Washington and California were the first to allow regulated cannabis to be grown, sold and used in their states. Other states followed suit. Today, forty (40) states plus Washington D.C. and three (3) U.S. territories have some form of state-legal regulated cannabis despite its federal illegality. It is possible that history repeats itself with hemp, particularly in states that have regulatory frameworks and have received significant tax revenue from the manufacture and sale of hemp products. Apart from noncompliance, there is also the possibility that states put new regulations in place allowing for certain lower dose hemp products to be sold in liquor stores and grocery stores that sell liquor, as opposed to being restricted to dispensaries. There is also the question of enforcement. Will the federal agents really raid stores across the country for nonintoxicating CBD and similar products?

In the absence of reasonable regulations, what are the consequences of the language in this Bill? If this language is allowed to become law and remain law, it will be catastrophic for the hemp industry. The hemp industry supports ~320,000 American jobs and generates \$28.4 billion in regulated market activity.^[6] In Texas alone, a ban would shut down approximately 6,350 businesses, force job losses for 40,000 citizens, and destroy \$7.5 billion in economic activity.^[7] In Minnesota, a ban would shutter 5,345 retailers licensed to sell hemp-derived edibles and beverages.^[8] While some may quibble with the data, there can be no doubt that thousands upon thousands of businesses will be impacted all over the country—not just brands and retail stores, but all of the ancillary businesses that support them like manufacturers, packaging companies, canning companies, insurance companies, extractors, marketing companies and transportation companies. The hardest hit, however, are likely to be American farmers, for whom hemp has been a lifeline since 2018. Without the ability to grow consumable hemp products, American farmers are left with only industrial hemp (used for fiber, building materials, paper and bioplastics). Unfortunately, the market for industrial hemp in the U.S. is small^[9]

and even that market will be negatively impacted. 26 members of Congress sent a letter to House Speaker Mike Johnson explaining this:

Perhaps most concerning is the characterization by proponents of this language that the bill will not negatively impact the industrial hemp industry. On the contrary, it eliminates the existing and future development of dual cultivars used by farmers to produce grain and cannabinoids or fiber and cannabinoids. These genetic advances are critical to maximizing the economic value of a single crop, giving farmers the flexibility to respond to shifting market demands and improve overall profitability. In short, the inherent interconnectedness of the grain, fiber and cannabinoid markets means the long-term success of American hemp farmers depends on the continued viability of all three markets. The hemp industry is not a collection of competing sectors, but an interconnected ecosystem where growth in one segment supports opportunity and innovation across the whole.”^[10]

Apart from the loss of an entire industry and the resulting collateral damage to those who work in that industry, there are other less-discussed consequences. For example, the language in the Bill seems to provide a carve-out for CBD and similar cannabinoid research at institutions of higher education or independent research institutes,^[11] but if CBD is no longer considered “hemp” under the Bill, then it becomes a Schedule I substance under the CSA, just like regulated cannabis. Schedule I drugs are considered to be drugs with no currently accepted medical use and a high potential for abuse.^[12] Because of this, research is highly restricted. Veteran groups say the ban on hemp could “slam the door shut” on medical research with the Veterans of Foreign Wars of the United States (“VFW”) saying that “[a] blanket ban on hemp cannabinoids would make it nearly impossible for researchers and [U.S. Department of Veteran Affairs] hospitals to study these compounds legally.”^[13] Likewise, research into CBD, like the use of injectable CBD (instead of oral CBD) for improved treatment of epilepsy; the use of “flexible dosing schemes of cannabis extracts [to] manage diverse [chronic pain syndrome] condition in female patients,” and the use of cannabinoids to “effectively reduce seizure frequency in children” could be jeopardized.^[14] It is unclear at this point how the Bill language will impact this kind of research given the burdensome regulatory requirements that will now apply, including a Schedule I research registration from the Drug Enforcement Administration (DEA) which mandates extensive security, storage, inventory and recordkeeping controls and requires preapproval of research protocols and site inspections.^[15] Human studies additionally require an Investigational New Drug (IND) application with the FDA and studies involving regulated cannabis have historically required sourcing from federally authorized suppliers through the National Institute on Drug Abuse (NIDA), further delaying research.^[16] Schedule I status also imposes restrictions on importation, interstate shipment, analytical methods and routine laboratory handling, creating multi-agency approval layers that can take years to navigate.^[17] None of the CSA-based requirements currently apply to research on hemp-derived CBD and similar nonintoxicating cannabinoids.

Another unintended consequence-regulated cannabis companies currently using hemp-derived CBD will need to switch to CBD that is subject to the same state laws and regulations as regulated cannabis (including IRS Rule 280E which prohibits certain business deductions). This means it becomes more expensive for regulated cannabis companies to produce many of their products, which is something the regulated cannabis industry cannot afford. Additionally, many regulated cannabis companies now have their own hemp-derived delta 9 THC beverages and edibles that they

sell direct to consumers online and in stores. Their revenue will also be impacted by the inability to sell these products across state lines, and in liquor stores, restaurants and grocery stores.

So, what's next? As the dust settles, there is no doubt that the consequences of the “hemp ban” language in the Bill will become more stark. If there is any good news, it is that this issue is now front and center with legislators who will no doubt continue to hear from their constituents about the harm that will be caused by this language in one year’s time. Additionally, the passing of the Bill will further galvanize the hemp industry and the organizations that support it, like the [U.S. Hemp Roundtable](#) and the [Hemp Beverage Alliance](#), to push for responsible regulations in lieu of a total ban over the next year.

There is of course the possibility of legal action on the part of trade associations, manufacturers and retailers against government officials responsible for enforcement to stop the language from being implemented. Such challenges could come in the form of declaratory and injunctive relief, as well as monetary relief, and could include constitutional and statutory claims arguing flaws in rulemaking under the Administrative Procedures Act (“APA”), due process and equal protection claims, commerce clause claims, notice and reliance arguments, and claims that a funding bill is not the appropriate vehicle to ban an entire category of products (keeping in mind that funding bills are annual, and therefore temporary, whereas bans are intended to be permanent).

There is also the possibility that the federal government and certain states seize on this language to either begin or continue to aggressively crack down on manufacturers and sellers of products containing delta-8 and other synthetic cannabinoids, as well as THCA flower products. This could cause division within the hemp industry at large, with certain product categories like low-dose beverages and edibles taking a position that is contrary to other hemp industry proponents who want all hemp products to remain available and federally legal under the Farm Bill.

Lastly, the Farm Bill is up again for consideration next year. There have been two (2) extensions thus far to the Farm Bill, first through fiscal year 2024 and again through the end of fiscal year 2025 (September 30, 2025) and the end of the crop year (December 31, 2025).^[18] In past reauthorizations, hemp provisions were left unchanged despite attempts by some legislators to “close the loophole” with language similar to that found in the Bill. The next full Farm Bill reauthorization is expected in 2026, creating another opportunity for legislators to rewrite the federal hemp regime.

Time will tell what happens next, but if there is one thing everyone can agree on, it is that it will be a very interesting year in the world of hemp.

[1] [BILLS-119hr4121rh.pdf](#), p. 129.

[2] “(A) IN GENERAL.-The term ‘hemp’ 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 total tetrahydrocannabinols concentration (including tetrahydrocannabinolic acid) of not more than 0.3 percent on a dry weight basis.”
[BILLS-119hr4121rh.pdf](#), p. 129.

[3] [The Agriculture Improvement Act of 2018 \("Farm Bill"\)](#).

- [4] [BILLS-119hr4121rh.pdf, p. 131.](#)
- [5] [U.S. Hemp Roundtable.](#)
- [6] [Letter_to_senate_leadership_on_hemp_language_in_fy26_ag-fda_bill.pdf.](#)
- [7] [New Report Reveals Texas Hemp Market Contributes \\$10 Billion to State Economy | Cannabis Business Times.](#)
- [8] [How Minnesota became the gold standard for hemp-THC sales.](#)
- [9] [USDA: Industrial Hemp in the United States: Status and Market Potential](#) (“The U.S. market for hemp fibers is, and will likely remain, a small, thin market.”)
- [10] [September 26, 2025 Letter to Speaker Mike Johnson.](#)
- [11] [BILLS-119hr4121rh.pdf, p. 133.](#)
- [12] [Drug Scheduling.](#)
- [13] [Top Veterans Group Warns Congress That Hemp Ban Could 'Slam The Door Shut' On Medical Research - Marijuana Moment](#)
- [14] [Surprising senator votes to keep hemp THC products legal \(Newsletter: November 12, 2025\) - Marijuana Moment.](#)
- [15] [21 U.S. Code § 823 - Registration requirements | U.S. Code | US Law | LII / Legal Information Institute, eCFR :: 21 CFR 1301.18 -- Research protocols, eCFR :: 21 CFR 1301.32 -- Action on applications for research in Schedule I substances.](#)
- [16] [eCFR :: 21 CFR Part 312 -- Investigational New Drug Application.](#)
- [17] [21 U.S. Code § 952 - Importation of controlled substances | U.S. Code | US Law | LII / Legal Information Institute, 21 U.S. Code § 952 - Importation of controlled substances | U.S. Code | US Law | LII / Legal Information Institute, 21 U.S. Code § 952 - Importation of controlled substances | U.S. Code | US Law | LII / Legal Information Institute, 21 U.S. Code § 822 - Persons required to register | U.S. Code | US Law | LII / Legal Information Institute, eCFR :: 21 CFR 1301.13 -- Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities, eCFR :: 21 CFR 1301.71 -- Security requirements generally, eCFR :: 21 CFR 1307.11 -- Distribution by dispenser to another practitioner, eCFR :: 21 CFR 1301.18 -- Research protocols, eCFR :: 21 CFR 1301.72 -- Physical security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs; mobile narcotic treatment programs; storage areas, eCFR :: 21 CFR 1304.11 -- Inventory requirements, 21 U.S. Code § 823 - Registration requirements | U.S. Code | US Law | LII / Legal Information Institute.](#)
- [18] [Expiration of the 2018 Farm Bill and Extension for 2025 | Congress.gov | Library of Congress.](#)