

## NEW HEMP DEFINITION/LEGALITY “CHEAT SHEET”

On November 12, 2025, “*Hemp*’s” definition, and the allowability of “Hemp-Derived Intoxicating Products”, was significantly altered by the “*Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026*” H.R.5371, Public Law No: 119-37” (“Act”) enactment.

### **Amends Hemp’s Federal Definition Banning Most Hemp Products**

Previously, *the Agriculture Improvement Act of 2018* ("Farm Bill") both legalized *Hemp* and its derivatives and removed plant *Cannabis sativa L.* containing no more than 0.3% Delta-9 Tetrahydrocannabinol (“THC”) on a dry-weight basis from the *Controlled Substance Act*, 21 U.S.C. §§ 801, *Et. Seq* (1970)’s (“CSA”) and Drug Enforcement Administration’s purview. 7 U.S.C. §1639o(1).

The Act narrows the Farm Bill’s “*Hemp*’s” definition effectively banning most commercial hemp products and, providing a 1-year transition period, takes effect 365 days following Act’s enactment.

### **Redefines *Hemp***

- While still generally referring to *Cannabis sativa L. plant*, including all parts, seeds, derivatives, extracts, and various compounds (cannabinoids, isomers, acids, salts, and salts of isomers), the Act’s definition creates “*Total THC*” encompassing Tetrahydrocannabinol Acid and all other cannabinoids having similar effects as THC (ex., Delta-8 THC) rather than solely Delta-9 THC.
- 0.4 MGs Total THC Per Container “Strict Potency Cap”. To qualify as legal “Hemp,” material must maintain a *Total THC* concentration (including THCA and any other cannabinoids having a similar effects as THC) of: (1) not more than 0.3% on a dry weight basis and; (2) final hemp-derived cannabinoid products may not exceed 0.4 milligrams (“MGs”) *Total THC* per container. The Act defines “*Container*” as “innermost wrapping, packaging, or vessel in direct contact with a final hemp-derived cannabinoid product” which is intended for final retail sale but excludes bulk packaging.
- “Synthetic/Converted Cannabinoids-Final Product and WIP Ban”. Both final products and *Intermediate Hemp Material* (“WIP”) are excluded from Act’s Hemp definition, and classified as Schedule 1 Marijuana, if: (1) containing any synthetic or manufactured cannabinoids (naturally occurring cannabinoids synthesized outside of the plant); or (2) exceeding the legal *Total THC* concentration limit.

**FDA Action:** The Food and Drug Administration (“FDA”) is tasked with issuing a guidance: (1) identifying all relevant Cannabinoids; and (2) clarifying the “*Container*” definition.

#### Practical Impacts on Specific Components:

- **Final Form Products.** One year following enactment, the Act:
  - (1) caps all Hemp and Hemp-Derived Products at no more than 0.4 MGs *Total THC* per *Container*, regardless of dry weight percentage; and
  - (2) bars final cannabinoid-hemp products from containing any synthetic or manufactured Cannabinoids.

- **Intermediate Hemp Material (“WIP”).** Intermediate Hemp-derived cannabinoid products are those not yet in final form or intended for human or animal consumption. The Act’s “Hemp” definition expressly excludes WIP containing:
  - o Synthetic/Manufactured Cannabinoids: Cannabinoids that are: (1) not naturally produced by the plant; or (2) naturally occurring cannabinoids synthesized or manufactured outside of the plant.
  - o Significant THC Levels: Products exceeding 0.3% *Total THC* (including *THCA*) combined with any other cannabinoids that Health and Human Services determines to have effects similar to THC or are marketed as such.
  - o Products Marketed/Sold to Consumers: Any intermediate products sold or marketed as a final product directly to end users.
- **Hemp Seeds.** Viable seeds are explicitly excluded from the Act’s Hemp definition if the parent plant exceeds *0.3% Total THC threshold* (i.e., seeds derived from Marijuana are illegal). Further, seeds are only categorized as "industrial hemp" if intended for specific limited research or non-consumable purposes (ex., fiber, stalk, non-cannabinoid oils).
  - o The Act’s *Hemp* definition excludes any viable seeds from a *Cannabis sativa L. plant* if that plant exceeds “0.3% *Total THC dry weight basis concentration threshold*” as derived from Marijuana and illegal.
  - o Hemp cultivated to create viable seeds is only categorized as "industrial hemp" if the seed is produced solely: (1) to create or manufacture stalk/fiber, non-cannabinoid seed derivatives (oil, cake, nut, hull), microgreens derived from immature plants grown from compliant seeds; or (2) for defined research purposes.
- **Interstate Commerce Impact.** The Act:
  - o eliminates interstate commerce for Hemp products exceeding 0.4 MGs per container, causing vendors to restrict operations to intrastate sales; and
  - o subjects Hemp products exceeding threshold to be classified under Schedule 1 of the Controlled Substances Act:
    - requiring carefully evaluating risk tolerance in light of applicable states’ Cannabis and Controlled Substances laws and regulations; and
    - weighing impact of §280E of the Internal Revenue Code which will forbid vendors from taking any tax deduction or credit other than “cost of goods sold” thereby denying ordinary and necessary business expense tax deductions (ex., wages, rent, utilities, and insurance) causing operations to be more expensive and less profitable. 26 U.S. Code §280E (1982).