

Practice Update

Congress Enacts Sweeping Recriminalization of Hemp-Derived THC Products in Federal Spending Bill Ending Government Shutdown

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On November 12, 2025, President Donald Trump signed into law the government funding package (H.R. 5371), ending the longest government shutdown in U.S. history — and, in doing so, enacted the most consequential federal change to hemp policy since the 2018 Farm Bill, poised to upend a \$28 billion dollar industry.

Found within the Continuing Appropriations and Extensions Act of 2026 is a provision that will recriminalize the vast majority of hemp-derived THC products, including delta-8, delta-10, and potentially even many non-intoxicating CBD products commonly sold nationwide.

As drafted, the provision dramatically narrows the definition of lawful hemp and imposes restrictions upon both total THC limits and cannabinoids synthesized from hemp-derived CBD. While stakeholders secured a one-year implementation window, the new federal definition — if unchanged — would effectively eliminate most of today's consumable hemp-market.

Companies across the hemp, CBD, cannabis, wellness, alcohol, and consumer packaged goods

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sectors should assess business and legal impacts immediately.

Key Provisions

1. New Federal Definition of Hemp (Effective in 12 Months)

The legislation revises the core definition of “hemp” under federal law. Beginning one year from enactment, hemp will only be federally legal if it contains:

- No more than 0.4 milligrams of total THC *per container* (a shift from the prior 0.3% delta-9 THC *dry weight* standard)
- No cannabinoids—regardless of concentration—that are synthesized or manufactured outside the cannabis plant
- No cannabinoids with “similar effects (or marketed as having similar effects)” to THC (as determined by HHS)

Importantly, “total THC” now includes delta-8, delta-10, other isomers, and any other intoxicating cannabinoids, whether naturally occurring or artificially derived.

This language closely mirrors prior proposals championed by Rep. Mary Miller (R-IL) and supported by anti-legalization advocacy groups such as Smart Approaches to Marijuana (SAM) and, notably, major alcohol industry trade associations and several regulated cannabis trade organizations.

2. Immediate Regulatory Mandates for FDA and Other Agencies

Within 90 days, FDA and relevant agencies must publish:

- A list of all cannabinoids known to be naturally produced by the cannabis plant

- All naturally occurring THC-class cannabinoids
- A list of all cannabinoids with similar effects to THC, or marketed as such

This will effectively create a federal “allowed vs. prohibited” cannabinoid list.

3. Ban on Intermediate or Synthesized Products

The bill expressly prohibits:

- Intermediate hemp-derived cannabinoids marketed or sold directly to consumers
- Any cannabinoid synthesized or manufactured outside of the plant, or not naturally produced by *Cannabis sativa* L

This will directly target delta-8, delta-10, and “semi-synthetic” cannabinoids produced from CBD isolate.

4. Enforcement Delayed — but Not for Long

Congress built in a 365-day delay before enforcement begins. Lawmakers including Sen. Chris Van Hollen (D-MD) have already characterized this period as a window to pass alternative legislation establishing a responsible regulatory framework for consumable hemp products.

Industry groups — including hemp advocates and several manufacturers — have announced plans to press for a legislative fix in 2026.

Industry Impact

Hemp & CBD Companies

More than *90% of currently available non-intoxicating CBD products* exceed the new 0.4 mg per-container cap, according to the U.S. Hemp Roundtable. Unless reform is enacted next year, many companies would face:

- Product removal from interstate commerce
- Potential criminal exposure
- Disruptions to supply chains and vendor agreements
- Loss of access to major retail channels

Cannabis Operators (THC)

State-legal and regulated cannabis (marijuana) companies generally support the move, which would:

- Reduce competition from unregulated intoxicating hemp products
- Channel intoxicating cannabinoid sales into state-legal cannabis markets
- Clarify that intoxicating hemp products are legally equivalent to cannabis

Alcohol Industry

Major alcohol trade groups have strongly advocated for the ban, citing:

- Consumer safety concerns
- An uneven regulatory playing field
- Access by minors

Veterans, Seniors, and Medical CBD Users

Notably, the legislation also omits bi-partisan provisions allowing U.S. Department of Veteran Affairs doctors to recommend medical marijuana to patients in states where it is legal, even though the policy was approved by the full House and Senate earlier this year. Access to legal marijuana is even more critical given the new limitations on hemp products — indeed, advocates warn that the change may cut off access to widely used, non-intoxicating health and wellness products — particularly because the new THC cap is so low.

Political Landscape

- Efforts to strike the hemp ban were led by Sen. Rand Paul (R-KY) and Rep. Thomas Massie (R-KY) but were ultimately defeated.
- Opposition spanned party lines, including Sen. Ted Cruz (R-TX).
- The White House has explicitly stated the President Trump supports the ban language, as illustrated by his immediate signing of the bill.
- Thirty-nine state attorneys general urged Congress to adopt it, citing difficulties controlling intoxicating hemp via state law alone.

What Companies Should Do Now

1. Conduct an Immediate Product Portfolio Audit

- THC content — total delta-9, delta-8, delta-10, isomers
- Synthesis pathways (natural vs. converted)
- Finished product container size and total THC load

2. Prepare for Federal Rescheduling of Key Cannabinoids

Companies utilizing conversion-based methods should assess patent, supply chain, and contract risk.

3. Engage in 2026 Legislative Advocacy

The next 12 months will be a critical window. Stakeholders should coordinate with:

- Trade associations
- State regulators
- Congressional offices
- Veteran and wellness consumer groups

4. Plan for Multi-State Compliance

Because the bill aligns intoxicating hemp with cannabis, operators should expect:

- State-level cannabis licensing requirements for product sales
- Labeling, testing, packaging obligations
- Expansion of age-gating and proof-of-identity controls

5. Evaluate Litigation Options

Potential themes include:

- Administrative procedure challenges
- Commerce Clause arguments (re: interstate CBD trade)
- Overbreadth and vagueness claims (e.g., “similar effects” standard)

We expect litigation to be filed, particularly by large CBD manufacturers and retailers.

Outlook

The hemp-derived intoxicants market — built on the 2018 Farm Bill’s silence regarding non-delta-9 THC cannabinoids — will cease to exist in its current form unless Congress enacts corrective legislation in 2026. While the one-year delay offers a pathway for reform, companies should operate under the assumption that major structural changes to the national hemp industry are now inevitable.

Our Cannabis Practice will continue to track developments, engage with policymakers, and advise clients navigating this rapidly shifting landscape.

If you need assistance auditing your product line, preparing an advocacy strategy, or assessing business impact, please contact our team.

Disclaimer:

Possessing, using, distributing, and/or selling marijuana or marijuana-based products is illegal under federal law, regardless of any state law that may decriminalize such activity under certain circumstances. Although federal enforcement policy may at times defer to states' laws and not enforce conflicting federal laws, interested businesses and individuals should be aware that compliance with state law in no way assures compliance with federal law, and there is a risk that conflicting federal laws may be enforced in the future. No legal advice we give is intended to provide any guidance or assistance in violating federal law.

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