ATACH

2026

# Hemp Intoxicants Report

# Contents



 

# Preface

Dear Reader,

This report arrives at a pivotal moment – offering a snapshot of current laws, policies, and insights into the unregulated intoxicating hemp market.

In November 2025, Congress enacted P.L. 119-37, which addressed the definition of hemp under federal law and set a November 2026 deadline for the market to conform. Simultaneously, the executive branch advanced cannabis rescheduling and more than thirty states moved to legislate intoxicating hemp.

While states have taken many different paths to arrive at this moment, the solution ahead is straightforward: establish national standards and federally legalize cannabis.

As the largest and most influential association of its kind, the American Trade Association for Cannabis and Hemp is leading the way with courage and conviction. We are guided by the principle that a regulated industry promotes public health and safety, supports consumer protections, and advances better policy.

Michael Bronstein
President
ATACH

> The Farm Bill governs how hemp is grown. P.L. 119-37 governs what can be sold. State regulatory frameworks govern how products reach consumers. Each instrument serves a distinct purpose in the emerging framework. This report addresses all three.

# Terminology

### Cannabis

In this report, "cannabis" is used in two distinct ways. In common usage and in commercial settings, "cannabis" is synonymous with “marijuana.” These are products that fall outside the federal definition of hemp and are subject to state adult-use or medical licensing programs. However in the scientific or botanical context, we use the full botanical name, Cannabis sativa L., which includes all forms of the plant whether legally defined as hemp or marijuana. Readers should note that hemp and cannabis are not botanical opposites; both derive from the same plant species and they are distinguished only by the amount of THC that naturally occurs in the plant. We use the term “marijuana” when referencing state or federal laws that use that term.

### CBD (Cannabidiol)

A naturally occurring, non-intoxicating cannabinoid, widely used in wellness products. Cannabidiol can also be modified to create one or more analogs of THC through synthetic conversion. CBD remains legal under federal law following P.L. 119-37 and is not scheduled under the Controlled Substances Act. The regulatory pathway for CBD food and supplement products remains unresolved by FDA, though the December 2025 executive order directed HHS to develop research frameworks for hemp-derived cannabinoid products. THC made from CBD has been excluded from the definition of hemp in P.L. 119-37.

### Full-Spectrum CBD Products

For the purposes of this report, Full-Spectrum CBD Product refers to a product, whose primary active ingredient is CBD, and that also contains a complete array of phytocannabinoids and botanically related substances present in that source material, including trace amounts of THC. While Full-spectrum products are often preferred on the theory that cannabinoids work more effectively in combination than in isolation, there is currently no standard definition for Full-Spectrum leaving the term open to frequent mischaracterization. The interaction between P.L. 119-37's container caps and full-spectrum CBD products raises compliance questions that the December 2025 executive order specifically directed Congress and HHS to address. Full spectrum and other categories of retail CBD products are discussed in Section 4.

### Hemp

Under current federal law (prior to the November 2026 effective date of P.L. 119-37), hemp is defined as cannabis with a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis. After November 2026, the definition adjusts to the more commonly used measure of total THC, and defines hemp as cannabis with total THC (including THCA) of no more than 0.3 percent on a dry weight basis, and hemp cannabinoid products as those with a total THC no more than 0.4 milligrams per container. The definition further introduces categorical exclusions for synthetic and chemically converted cannabinoids.

### Hemp Beverages

A type of beverage containing hemp-derived cannabinoids, most commonly delta-8 THC, delta-9 THC or CBD. Hemp beverages on the market today may contain naturally derived or synthetic THC. After November 2026, hemp products exceeding the 0.4 mg per container threshold, or containing synthetic cannabinoids, will no longer qualify as a hemp cannabinoid product.

### Hemp Intoxicants

This report's title identifies a category of products created by the so-called 2018 Farm Bill "loophole." These products contain hemp-derived cannabinoids to produce an intoxicating or psychoactive effect. While hemp is not naturally intoxicating, the term "hemp intoxicant" has been popularized and we use it this year's report.

This term encompasses both natural THCA products, as well as chemically converted products such as delta-8, delta-9, delta-10, HHC, and THCA products sold in the hemp channel. Following the implementation of P.L. 119-37, hemp cannabinoid products will no longer cover products containing intoxicating levels of THC-class cannabinoids. Beginning November 12, 2026 this category will be considered cannabis, and no longer covered by the hemp definition.

Because hemp has been redefined to exclude intoxicants, future iterations of this report will no longer utilize the term "hemp intoxicant" after the definition change is effective.

### Marijuana

See Cannabis.

### P.L. 119-37

P.L. 119-37 refers to Public Law 119-37, the federal law passed in November 2025 that establishes a total THC standard replacing the prior delta-9-only measurement, sets a 0.4 milligram per-container THC cap for finished consumer products, and categorically excludes synthetic and chemically converted cannabinoids from the definition of hemp. Its provisions take effect November 12, 2026, giving the market a one-year transition period from enactment.

### Synthetically Produced Cannabinoids

Cannabinoids that are produced through chemical synthesis rather than extracted from the cannabis plant. Synthetic cannabinoids were excluded from the hemp definition under P.L. 119-37 and represent a distinct legal and safety concern from plant-derived cannabinoids. In commercial products, these include delta-8 THC, delta-9 THC, delta-10 THC, HHC, THCP and others. These products are variously called synthetic or semi-synthetic cannabinoids. For the purposes of this report, all cannabinoids generated through a chemical conversion are considered synthetic.

## THC (Tetrahydrocannabinol)

THC is the family of compounds responsible for the psychoactive effects of cannabis. The term encompasses several distinct molecules that differ in structure, potency, and even origin -- some occurring naturally in the plant, others produced through chemical processes.

**THCA (Tetrahydrocannabinolic Acid).** THCA is the acidic form of THC as it exists in the cannabis plant. It is non-intoxicating until converted to THC when heated – through smoking, vaping, or cooking -- via a process called decarboxylation. Products marketed as "THC-A flower" or "THCA flower" are cannabis and exist by exploiting the narrow definition in the 2018 Farm Bill. A consumer purchasing THCA flower at a hemp retailer is purchasing a product that is identical to cannabis and will deliver an intoxicating effect no different than cannabis. P.L. 119-37 addresses this directly by measuring total THC inclusive of THCA.

**Delta-9 THC.** The active form of THC produced when THCA decarboxylates. Delta-9 is the primary psychoactive compound in cannabis and the molecule most people mean when they say "THC." It is the most abundant, most studied, and most regulated form of THC. The original 2018 Farm Bill hemp definition was built around delta-9 concentration.

**Delta-8 THC.** Delta-8 is a structural variant of delta-9 that occurs in only trace amounts in the cannabis plant. Commercially, it is rarely extracted from the plant – and instead produced by chemically converting CBD, a non-intoxicating cannabinoid that is abundant in hemp. Delta-8-THC is intoxicating, though generally less potent than delta-9. P.L. 119-37's categorical exclusion of converted cannabinoids from the hemp definition effectively removes delta-8 products from the legal hemp market.

**HHC (Hexahydrocannabinol) and THCP (Tetrahydrocannabiphorol).** HHC and THCP represent a further step along the same continuum — cannabinoids produced through more intensive chemical modification of plant-derived compounds. HHC is made by hydrogenating THC or CBD. THCP is a naturally occurring cannabinoid identified in 2019 but present in only trace quantities in the plant; commercial THCP is synthetically produced and is estimated to be significantly more potent than delta-9 (commonly put at 23x the potency of delta-9 THC). Both fall outside the federal definition of hemp under P.L. 119-37 as converted or synthetic cannabinoids.

## Total THC

A measurement standard that accounts for all THC present in a product, including THCA (converted to its delta-9 equivalent using a standard conversion factor), delta-8 THC, delta-10 THC, delta-9 THC and any other analog (version) of THC. Total THC is the measurement standard adopted by P.L. 119-37 and by an increasing number of state regulatory frameworks. It more accurately reflects the intoxicating potential of a product than delta-9 THC alone.

# Executive Summary

## Key Takeaways

- The 2018 Farm Bill's narrow hemp definition created an unintended gray market in intoxicating THC products — P.L. 119-37 closes that gap with a total THC standard, a 0.4 mg per-container cap, and a ban on synthetic and converted cannabinoids, effective November 2026
- 30 states have existing hemp regulatory frameworks, 14 have banned hemp intoxicants, and 7 remain without meaningful oversight — but none include potency limits meeting the incoming federal standard
- THC beverages are a product category generating regulatory interest
- CBD is closer to a viable legal foundation than ever — but still lacks the consumer product pathway Congress intended
- The transition to meet the new federal definition is already underway: banks, insurers, and supply chain partners are reevaluating their relationships, and states without aligned definitions risk disruption without the tools to manage it

 

# The Big Picture

## Intro

The 2018 Farm Bill redefined hemp to help establish a new agricultural crop for American farmers and a pathway for CBD. However, it also set the conditions for a gray market in intoxicating THC products. The law's narrow definition, which measured only delta-9 THC at 0.3 percent on a dry weight basis and descheduled all other cannabinoids derived from hemp, was never designed as a final product standard. Yet a consumer intoxicants industry emerged, outside existing state cannabis regulations, and quickly grew to tens of billions of dollars in revenue annually. This report examines the federal and state response to that market, the law Congress enacted to close the gap, and the transition now underway.

Among the products that exploited the hemp definition, high-THCA hemp flower presented a particular challenge. THCA is the acidic precursor to delta-9 THC; abundant in cannabis flower but non-intoxicating until heated, smoked or vaporized, when it converts to THC through a process called decarboxylation. Because the 2018 definition measured only delta-9 THC, flower products with 20 percent or more THCA could qualify as legal hemp while delivering full intoxicating potency to the consumer. The inclusion of THCA in total THC, now codified in P.L. 119-37, ensures that plant material with the potential for intoxication cannot be miscategorized as hemp.

Another and even more popular means of exploitation was the emergence of synthetic and chemically converted forms of THC, which entered the market in 2020 and 2021. The 2018 Farm Bill excluded not only hemp itself from the Controlled Substances Act but also 'derivatives of hemp,' and that language proved sufficient to open a market in converted cannabinoids. Industrial hemp produces abundant, low-cost CBD, and processors discovered that CBD could be converted into delta-8 THC, delta-9 THC, delta-10 THC, HHC, THCP, and a range of other intoxicating compounds through relatively straightforward chemical processes using acids, solvents, or heat. None of these compounds occur in hemp beyond trace amounts, but because they were synthesized from a starting material that naturally occurs in hemp, producers argued that they qualified as lawful hemp derivatives under the 2018 definition. The DEA and FDA disagreed, but enforcement was practically nonexistent and courts were inconsistent in their interpretation. P.L. 119-37 closes the gap directly: synthetic cannabinoids and any cannabinoid produced through chemical conversion are excluded from the definition of hemp regardless of the source material.

In the six years since the 2018 Farm Bill's passage, a massive intoxicants industry sprang into place producing chemically converted cannabinoids, high-potency edibles, vapes, and "THCA flower" - outside existing state cannabis laws. Throughout the US, these products were sold without age restrictions , testing requirements, manufacturing oversight or retail regulation, all being marketed as "hemp." By 2023, hemp-derived intoxicating products were available in gas stations, convenience stores, and smoke shops in nearly every state, earning the term "gas station weed." Often these were packaged in a manner designed to appeal to young consumers, and with potency levels that rivaled or exceeded products sold in licensed cannabis dispensaries. The intoxicating hemp industry has grown ever since.

### Federal Course Correction

November 2025, Congress enacted P.L. 119-37, the most significant change to federal hemp law since the 2018 Farm Bill. Effective November 12, 2026, the law redefines hemp to exclude plant material over 0.3% total THC (including THCA) by dry weight, hemp cannabinoid products containing more than 0.4 mg total THC per container and all synthetic and chemically converted cannabinoids. Products that do not meet the new standard remain scheduled under the Controlled Substances Act.

### The Deadline

The one-year transition between enactment and effective date was intended to allow sufficient time for markets to conform. Hemp intoxicants advocates saw this as an invitation to negotiate a better arrangement, and later shifted to appeals for delay as it became increasingly apparent a better arrangement was not on the table. The rest of the market has not been waiting, however. Banks, payment processors, and insurance carriers operate prospectively. Financial institutions have already begun reviewing hemp-related accounts, and carriers have started asking questions about product lines. Some hemp intoxicants businesses have adjusted, transitioning to other products, or reformulating to meet the revised standard. But many have opted to dump untested, unregulated intoxicating products into the marketplace before the new definition goes into effect. Some of these products have even emerged in regulated state cannabis markets (an illegal process referred to as “inversion”).

### Emerging Categories

Despite the rapid growth of unregulated products, two categories have emerged with unique opportunities within the regulatory landscape. First, CBD products have finally established legal footing on the federal stage. With the clarity introduced in P.L. 119-37, hemp-extracted CBD is likely to see a resurgence in the U.S. market. A second category gaining unique traction is THC beverages. Prior to the emergence of hemp intoxicants products, THC infused beverages were not widely recognized as their own distinct product category and market. Today however, it is not unusual to see one or more unique, beverage-only bills, covering both cannabis and hemp.

# What This Report Covers

This report examines the full scope of the hemp intoxicants transition. It begins with the mechanics of P.L. 119-37 and the parallel federal developments that will shape its implementation: the cannabis rescheduling process, and the pending Farm Bill.

It then turns to the state landscape, where 30 states have enacted some form of regulation for intoxicating hemp products, 14 have effectively prohibited them, and 7 remain without meaningful oversight. Among regulated states, consensus has formed around core elements: third-party testing, manufacturer licensing, a minimum purchase age of 21, total THC measurement, and bans on synthetic and converted cannabinoids. Where states diverge is on potency limits, retail models, and the fundamental question of whether these products should continue to exist in parallel or in concert with state cannabis programs, or if they should cease to exist at all.

The report documents the enforcement landscape across more than 24 states, the surge of pending legislation (more than 45 bills across 30 states in the 2025 and 2026 sessions), and the events unfolding during the transition year. It closes with recommendations organized by state posture, because the right next step often depends on where a state stands today.

### Key Conclusions

- The change in federal law is already reshaping the hemp intoxicants market, even before its effective date in November.
- CBD products, long supported by Congress but lacking a pathway to market, are closer to the footing necessary through the new definition - but more clarity is needed.
- State enforcement has expanded significantly but remains uneven, with jurisdictional confusion between agencies leaving gaps that the market has been calibrated to exploit.

### Looking Ahead

How this change plays out over the next year depends on variety of factors: how states chose to build and refine regulatory frameworks, what federal agencies implement the new definition, and the emergence of new product systems. The choices made during this window have the potential to protect public health, preserve legitimate business, and establish the foundation for a coherent national approach to intoxicating cannabinoid products.

SECTION 1

# What Congress Changed

## Key Takeaways

- P.L. 119-37 replaces the delta-9-only standard with total THC (including THCA), effective November 12, 2026
- Finished products are capped at 0.4 mg total THC per container
- All synthetic and chemically converted cannabinoids are excluded from the definition of hemp, regardless of source material
- The THCA flower loophole is closed — plant material is now measured on total THC, not just delta-9
- Non-intoxicating hemp (fiber, grain, CBD) remains fully legal

 

# What Congress Changed

## The End of the Definitional Gap

In November 2025, Congress enacted P.L. 119-37, clarifying the definition of hemp under federal law. The new definition, effective November 12, 2026, replaces the 2018 Farm Bill's delta-9-only standard with a total THC framework that includes THCA, imposes a 0.4 mg total THC per-container cap on finished products, and excludes all synthetic and converted cannabinoids from the legal definition of hemp.

This law directly addresses a critical enforcement gap that allowed intoxicating THC products to be manufactured, shipped, and sold nationwide under the label of "hemp." Since 2018, the Farm Bill's narrow delta-9 threshold created an opening: products containing converted cannabinoids like delta-8 and delta-10, THCA flower that becomes intoxicating when heated, and intoxicating edibles were sold without risk of enforcement due to the ambiguity introduced in the 2018 definition and inconsistency in how courts responded to various interpretations.

## The Old Definition

Under the Agricultural Marketing Act §297A, as amended by the 2018 Farm Bill, hemp was defined as the cannabis plant and its derivatives containing no more than 0.3 percent delta-9 THC on a dry weight basis. This definition was designed for industrial hemp, the plant in the field. It was never intended to serve as a consumer product standard for edibles, beverages, concentrates, or converted cannabinoids. But the use of the word 'derivative' muddied that intent, and regulators lacked clear statutory authority to distinguish between CBD tincture and a 100-milligram delta-8 gummy. Both were "hemp" under federal law.

# The Revised Federal Definition

P.L. 119-37 replaces the single delta-9 threshold with a multi-layered definition that addresses the plant, intermediates, and finished products separately. Each layer serves a distinct regulatory purpose.

### Total THC Standard

The new law measures total THC, which includes both delta-9 THC and THCA (tetrahydrocannabinolic acid, the precursor that converts to active THC when heated). This is the most structurally significant change. Under the old standard, cannabis flower with 20 percent THCA and 0.2 percent delta-9 qualified as hemp. That same flower, when smoked or vaped, delivers an intoxicating experience indistinguishable from cannabis purchased at a licensed dispensary. The total THC standard closes this gap by measuring what the plant will actually deliver to the consumer, not just what it contains in its raw, unheated form.

For the plant and intermediate products, the threshold remains 0.3 percent by dry weight, but it is now measured on a total THC basis. This ensures that agricultural hemp grown for fiber, grain, seed, and non-intoxicating extracts can continue to be produced and processed under existing USDA frameworks, while flower and biomass intended for intoxicating use no longer qualifies.

### Per-Container Limit

For finished products referred to as hemp cannabinoid products, the law introduces a 0.4 mg total THC per-container limit. This is a departure from the percentage-based standard, and was incorporated to address the limitations of a percentage threshold in final form products. Without clear definitions or a regulatory framework, percentage-based standards became an avenue for allowing higher-volume products to deliver significant doses of THC. Moving forward, a product containing 0.4 mg or less of total THC per container is a hemp cannabinoid product. A product containing more is not.

# What Is Excluded

### Converted and Synthetic Cannabinoids

The new definition explicitly excludes any cannabinoid that is not naturally produced by the cannabis plant or that is produced through chemical conversion outside the plant. This provision targets the core of the intoxicating hemp market. The vast majority of delta-8 THC, delta-10 THC, HHC, THCP, and similar cannabinoids sold as "hemp" are not extracted from the plant in meaningful quantities. They are manufactured by chemically converting CBD (which is abundant in hemp biomass and easily imported into the U.S.) into THC analogs using solvents, acids, catalysts, and heat.

Congress has now determined that this process of creating intoxicants through synthetic conversion falls outside the scope of agricultural hemp. After November 2026, a product containing converted cannabinoids is not hemp regardless of its THC concentration. It is a controlled substance under the Controlled Substances Act. The exclusion also applies to fully synthetic cannabinoids, compounds that do not originate from the cannabis plant at all.

### Products Affected

The practical impact is sweeping. The following product categories will no longer qualify as hemp once the new definition takes effect:

**Delta-8, delta-10, and HHC edibles and vapes.** These are the most common intoxicating hemp products at retail and are almost universally produced through chemical conversion of CBD.

**THCA flower.** Cannabis flower (marijuana) marketed as hemp because its delta-9 content is below 0.3 percent, even though its total THC content (once THCA converts upon heating) produces full intoxication.

**High-potency THC edibles and beverages**. Products containing more than 0.4 mg of total THC per container, including many items currently marketed as hemp-derived.

**THCP and novel cannabinoid products.** Potent synthetic or semi-synthetic analogs that have appeared in the market in recent years.

# The Policy Intent

### Closing the Definitional Gap

P.L. 119-37 is a correction toward original Congressional intent. The 2018 Farm Bill was designed to legalize industrial hemp and remove it from the Controlled Substances Act. Congress did not intend to create a parallel, unregulated market for intoxicating THC products. But the delta-9-only definition, combined with limited FDA and DEA enforcement, produced exactly that result. An industry of intoxicating cannabinoid products grew rapidly in this gray area.

The new law restores the original distinction: hemp is non-intoxicating cannabis. Products that deliver intoxication, whether through naturally occurring THC, THCA conversion, or chemical manufacturing, belong in regulatory systems designed for intoxicating substances. That means state cannabis programs, federal controlled substance frameworks, or future federal pathways created specifically for these products.

### What Remains Legal

Agricultural hemp, including fiber, grain, seed, and research varieties, continues under existing USDA programs. CBD products that contain 0.4 mg or less of total THC per container remain in the hemp category, and in fact, CBD could achieve broad market access for the first time. Non-intoxicating cannabinoids such as CBG, and other minor cannabinoids are unaffected. The hemp supply chain for non-intoxicating products remains fully legal.

> The question for every state is not whether the federal definition is changing. It already has - just with a delayed implementation to allow industry to come into compliance. The question is whether the state's own framework is prepared for what comes next.

SECTION 2

# Executive Order and Rescheduling

## Key Takeaways

- The President directed the Attorney General to complete rescheduling of cannabis from Schedule I to Schedule III of the CSA — continuing an existing process, not starting a new one
- Rescheduling eliminates the Section 280E tax burden on licensed cannabis businesses, the single most immediate commercial impact
- Rescheduling does not legalize cannabis, create federal licensing, authorize interstate commerce, or preempt state law
- Many hemp intoxicants are made from synthetic cannabinoids, which are not included in the rescheduling action and would remain Schedule I
- The executive order references CBD access through CMS and directs Congress to create a pathway for full-spectrum CBD products

# What The Executive Order Directs

In December 2025, the President issued an executive order directing the Attorney General to complete the rescheduling of cannabis from Schedule I to Schedule III of the Controlled Substances Act. The order directs the completion of a rulemaking process that was already underway. It does not restart or replace the existing administrative proceedings. Until this is finalized, cannabis remains a Schedule I substance.

The executive order also contains several additional directives. It instructs the Attorney General to consider pardons or commutations for individuals serving federal sentences for cannabis-related offenses. It directs Congress to develop a legislative framework for hemp-derived CBD products, including potential mg-per-serving limits, per-container limits, and CBD-to-THC ratios. And it references a CMS pilot initiative to make certain hemp products available to Medicare beneficiaries through specific program models.

### The Rescheduling Directive

The rescheduling process predates the executive order. The Department of Health and Human Services completed its scientific and medical evaluation of cannabis and recommended rescheduling to Schedule III in 2023. The Department of Justice initiated its rulemaking in 2024. The executive order directs the Attorney General to bring this process to conclusion, but the underlying legal and scientific determination has already been made. Critically, the President's order is for a resolution, not a new beginning of the analysis.

### Cannabidiol Research

The order directs HHS to develop research methods and models utilizing real-world evidence to improve access to hemp-derived cannabinoid products and to inform standards of care. This sets the course, leaving it to the agency to engage in additional action and rulemaking.

# What Rescheduling Changes

Moving cannabis from Schedule I to Schedule III is not legalization. It does not create a federal licensing system, authorize interstate commerce, or preempt state law. What it does is change the federal regulatory posture toward cannabis in several commercially significant ways.

### Tax Treatment (280E)

The most immediate and concrete impact of rescheduling is tax-related. Internal Revenue Code section 280E prohibits businesses that traffic in Schedule I or Schedule II controlled substances from deducting ordinary and necessary business expenses. This provision was designed for illegal drug operations, but it applies with equal force to state-licensed cannabis businesses because cannabis is currently Schedule I. The result is effective tax rates that can exceed 70 percent for cannabis operators.

Once cannabis moves to Schedule III, section 280E no longer applies State-licensed cannabis businesses would be able to deduct rent, payroll, marketing, and other standard business expenses for the first time. This change fundamentally changes the financial viability of legal cannabis operations and eliminates one of the most significant competitive disadvantages that licensed operators face relative to the illicit market.

### Banking and Commercial Relationships

Rescheduling is expected to reduce, but not eliminate, some of the banking challenges that cannabis businesses face. Schedule III substances are routinely handled by the banking system (common examples include testosterone, ketamine, and certain anabolic steroids). However, the purpose to which cannabis is put is critical in its legal categorization, and neither adult use or medical cannabis are considered lawful purposes for Schedule III drugs. The executive order does not fundamentally change its legal footing in the Controlled Substances Act and as a result, changes are likely to be incremental rather than transformative for financial services.

# What Rescheduling Does Not Do

The gap between public perception of rescheduling and its actual legal effect is significant. Rescheduling has been widely characterized as a major step toward federal legalization. While symbolically accurate, in practice, rescheduling is a narrower action with important limitations that directly affect the hemp intoxicants landscape.

### State Authority and Interstate Commerce

Rescheduling does not preempt state law. States retain full authority to determine whether cannabis is legal within their borders, how it is regulated, and who may participate in the market. States that prohibit cannabis are entirely unaffected by rescheduling. States with legal programs continue to operate under their own regulatory frameworks. There is no federal licensing system, no national distribution authorization, and no interstate commerce pathway created by moving cannabis to Schedule III.

State cannabis markets would remain state-bounded. Interstate commerce of a Schedule III substance would require a DEA registration for lawful manufacture, distribution, and dispensing, just as other Schedule III substances do. But no federal agency has yet created a registration pathway for state-licensed cannabis businesses. The practical result of rescheduling is that state markets continue to function exclusively intrastate, without new federal authorization, but with the 280E burden removed.

SECTION 3

# The 2026 Farm Bill

## Key Takeaways

- The House draft proposes a two-track producer system: industrial hemp (reduced testing, relaxed felony bars) and cannabinoid production (full compliance, total THC measurement)
- The Farm Bill governs how hemp is grown — it does not regulate consumer products, retail sales, or intoxicating cannabinoids
- The proposed shift from delta-9 to total THC measurement for agricultural production aligns with P.L. 119-37's direction
- The Farm Bill addresses the farm gate and P.L. 119-37 addresses the retail shelf
- No consumer product pathway for CBD is included in the current draft

# Production, Not Final Products

### What the New Farm Bill Draft Proposes for Farmers

The House Agriculture Committee passed HR 7567, the Farm Bill reauthorization, by a vote of 34-17 on March 5, 2026. A floor vote is expected in the spring. At markup, Chairman Thompson indicated that a proposed amendment to extend the P.L. 119-37 November 2026 deadline was not germane. The amendment was proposed and withdrawn. As currently written, the bill does not include any provision to delay implementation of P.L. 119-37.

The House draft proposes a new two-track system for hemp producers, a shift from delta-9 to total THC measurement (including THCA), and adjustments to compliance and enforcement provisions. These are production-oriented provisions. They are designed to better serve the industrial hemp sector, including fiber, grain, seed, and research operations, while ensuring that the agricultural hemp program is not used to shelter intoxicating product manufacturing. Whether these provisions survive the legislative process in their current form remains to be seen, but they illustrate the direction some in Congress are heading.

### A Two-Track System for Producers

The most notable structural concept in the draft is a new producer designation system. Under the proposed language, a hemp producer would be required to designate their operation as either (I) industrial hemp only, or (II) hemp grown for any purpose other than industrial hemp. There is no third option provided, split-operation provision, or acreage-based allocation.

This distinction would apply to both state and tribal plans (under Section 297B of the Agricultural Marketing Act) and the USDA federal plan (under Section 297C). If enacted, the designation a producer chooses would drive the compliance requirements, testing obligations, and enforcement consequences that apply to their operation.

# How The Proposed Two Tracks Would Work

### The Industrial Hemp Track

**Reduced testing requirements.** Under the draft, producers who designate as industrial-hemp-only could qualify for alternatives to mandatory laboratory testing. State, tribal, and USDA plans would be permitted to include procedures for visual inspections, performance-based sampling, certified seed programs, or other verification methods in place of full lab analysis. However, these alternatives would not be automatic. If a producer failed to provide adequate documentation of industrial intent (such as seed tags, sales contracts, Farm Service Agency reports, harvest techniques, or harvest inspection records), they would revert to the full testing requirements that apply to the other track.

**Relaxed felony disqualification.** Under current law, individuals convicted of a controlled substance felony are ineligible to participate in the hemp program for ten years. The draft would allow states and the USDA to eliminate this waiting period for producers who designate as industrial-hemp-only. The rationale is straightforward: a fiber or grain operation presents a fundamentally different risk profile than an operation producing cannabinoid-rich biomass.

### The Other Hemp Track - Cannabinoid Production

**Full compliance retained.** Producers who do not designate as industrial-hemp-only would remain subject to the complete testing, sampling, and compliance framework. The key change proposed for this track is the measurement standard: the draft strikes "delta-9 tetrahydrocannabinol concentration" throughout and replaces it with "total tetrahydrocannabinol concentration (including tetrahydrocannabinolic acid)." The 0.3 percent threshold would be retained, but measured as total THC rather than delta-9 alone.

**Tightened violation reporting.** The draft would restructure when states and tribes must report producers to the Attorney General. Reports would be required for producers who either (I) violate their plan with a culpable mental state greater than negligence, or (II) produce a crop inconsistent with their industrial hemp designation. Under the proposed language, the existing negligence safe harbor — which currently allows producers who exceed THC limits through negligence to remediate without being reported to the Attorney General — would not apply to either category.

**New lab approval process.** The draft would require the Secretary of Agriculture, in consultation with the DEA Administrator, to establish a process for USDA to approve testing laboratories. This addresses longstanding concerns about laboratory reliability in hemp compliance testing.

# What the Farm Bill Does Not Address

### The Consumer Product Gap

The Farm Bill is an agricultural authorization. It governs how hemp is grown, tested, and regulated as a crop. It has never been designed to regulate what happens after hemp biomass leaves the "farm gate" and enters manufacturing, distribution, and retail channels.

As a result, the Farm Bill does not address: finished consumer products containing THC or other intoxicating cannabinoids; cannabinoid conversion processes (such as converting CBD to delta-8 or delta-10 THC); synthetic cannabinoid manufacturing; retail licensing, age-gating, or point-of-sale requirements; final product testing, potency labeling, or contaminant screening for consumer goods; beverage formulations or serving-size limits; or the interaction between hemp-derived products and the Controlled Substances Act.

The current draft also contains no reference to P.L. 119-37, the November 2025 law that redefines hemp to exclude intoxicating products effective November 2026. As currently written, the two pieces of legislation would operate in parallel and address fundamentally different problems.

### Why This Matters

If the Farm Bill's hemp provisions move forward in anything resembling their current form, P.L. 119-37 and the Farm Bill would be complementary, not competing. P.L. 119-37 addresses the consumer market by redefining hemp to cap finished products at 0.4 mg total THC per container, banning synthetic and converted cannabinoids, and reclassifying everything above that threshold as a controlled substance. The Farm Bill provisions address agricultural production by creating a more practical regulatory framework for hemp farmers while clarifying the measurement standard to total THC.

When stakeholders argue that the Farm Bill should include provisions for intoxicating hemp products, they are asking an agricultural commodity program to perform a function it was never designed for. When opponents argue that tightening the Farm Bill's production standards is sufficient to address the intoxicating products market, they are ignoring the reality that consumer product regulation requires entirely different tools: retail licensing, product testing infrastructure, age verification systems, and enforcement mechanisms that do not exist within USDA's agricultural programs.

> The Farm Bill governs how hemp is grown. P.L. 119-37 governs what can be sold. State regulatory frameworks govern how products reach consumers. Each instrument serves a distinct purpose in the emerging framework.

### Bottom Line

If enacted in its current form, the Farm Bill draft would reinforce federal direction by tightening agricultural hemp standards and creating clarity for industrial hemp producers. The proposed shift to total THC and the two-track producer designation align the production program with agricultural standards. But the Farm Bill does not, and cannot regulate intoxicating consumer products. That work requires purpose-built regulatory frameworks.

SECTION 4

# CBD from Hemp

## Key Takeaways

- CBD access for consumers was one of aims of the 2018 Farm Bill's hemp provisions, but seven years of FDA inaction left the market in regulatory limbo
- CBD isolate is currently the primary chemical precursor for converted THC products — any CBD framework must account for diversion into the intoxicants supply chain
- P.L. 119-37 creates a clear federal legal foundation for CBD for the first time, but a consumer product pathway through FDA does not yet exist
- Full-spectrum products lacks a standardized definition, and the term can be used to describe products containing significant THC per serving, blurring the line between health and wellness and recreational use
- The executive order signals federal willingness to treat non-intoxicating hemp products as legitimate, including potential CBD access through Medicare's CMS program

 

# The CBD Promise

The 2018 Farm Bill's hemp provisions were enacted primarily to enable a domestic industrial hemp industry -- covering fiber, grain, and cultivation for research. However, CBD was understood to be a significant commercial byproduct of hemp legalization, and members of Congress were aware that CBD products would enter the consumer market as a result. CBD was, and still is, seen as a health and wellness product unassociated with intoxication, and had surged in popularity around the time Congress was considering the language of the Farm Bill. The promise was straightforward: American farmers would grow hemp, processors would extract CBD, and a new health and wellness category of non-intoxicating consumer products would enter the market through legitimate retail channels.

That vision did not materialize. Farmers planted aggressively in 2019 and 2020, driven by projected demand that never materialized. There was no effective supply chain in place, and overproduction collapsed prices. By 2021, the hemp CBD market was in full correction, with processor bankruptcies, abandoned crop, and a sharp contraction in licensed acreage across major producing states.

### The FDA Problem

The over production was compounded by a regulatory hesitation at the federal level. The 2018 Farm Bill preserved FDA's authority over hemp-derived products under the Federal Food, Drug, and Cosmetic Act. Congress' expectation was that FDA would create a regulatory pathway for CBD as a food ingredient or dietary supplement.

Instead, the agency took the position that CBD could not be marketed in food or supplements. FDA formally concluded that (1) existing regulatory pathways were not appropriate for CBD, (2) there was evidence it could cause liver damage in some consumers, particularly at high levels, and (3) there was already a pharmaceutical company with the right to market and sell CBD derived from the cannabis plant as a pharmaceutical drug. FDA told Congress that a new pathway was needed and that congressional action was required to create one. For seven years, CBD products were sold across the country in a regulatory gray zone: removed from the Controlled Substances Act as a "derivative of hemp", but unauthorized by FDA for the consumer product applications that were supposed to define the market.

### The Synthetic THC Problem

In addition to being a health and wellness product, CBD is the primary chemical precursor for nearly all semi-synthetic THC products on the market today. Delta-8 THC, delta-9 THC, delta-10 THC, HHC, THCP, and similar intoxicating cannabinoids are not extracted from the hemp plant in commercially viable quantities. They are created by chemically converting CBD isolate, which is abundant in hemp and inexpensive, into THC analogs using solvents, acids, catalysts, and heat. The same oversupply of hemp biomass that crashed CBD prices after the 2018 Farm Bill created the perfect conditions for synthetic conversions, and the resulting influx of the cheap CBD isolate entering the United States from overseas suppliers for THC production. P.L. 119-37 addresses part of the problem by excluding converted cannabinoids from the definition of hemp, but addressing the flow of CBD into unlicensed conversion labs will require attention at both the federal and state level.

# CBD Retail And Manufacturing

## How CBD Shows Up in Retail Products

P.L. 119-37, which passed into law in November 2025, sought to correct the definition of hemp and clarify the original intent of the 2018 Farm Bill. While the new provisions restricted THC from hemp products, they did not limit CBD.

In retail sales, consumable CBD products generally fall into three categories. CBD isolate is the most refined form, processed to greater than 99 percent purity with virtually all other plant compounds removed, including THC. Broad-spectrum products retain a wider range of naturally occurring cannabinoids, terpenes, and flavonoids but are processed to remove THC.

Full-spectrum products are intended to preserve the complete cannabinoid profile of the source plant material, including naturally occurring THC, on the theory that these compounds work together to enhance the product's therapeutic effect.

Unfortunately these terms are used inconsistently and without adherence to any particular standard — with full-spectrum often being used to describe any hemp product containing THC in combination with other cannabinoids, regardless of the source material or manufacturing process. For some, full spectrum hemp products are simply a way to access intoxicants without age restrictions. But for others, this presents a significant risk as products are often untested, and poorly labeled leading to involuntary intoxication and failed drug screenings.

## Where “Health and Wellness” Can Become “Recreational”

While THC is present at low levels in the hemp plant, the process of refining hemp plant biomass for its cannabinoids has the effect of concentrating all cannabinoids in the material, including both CBD and THC. Once it is fully refined and formulated, full-spectrum products can have significant THC per serving. While some full spectrum products have less THC per serving, there is no standardization, and the higher THC products have become popular for those looking to bypass the regulated system. For reference, a product containing 5-10mg of THC is equivalent to those found in “adult-use” state cannabis programs, blurring the line between health and wellness and recreational cannabis use.

## The Intermediate Product Problem

A separate challenge relates to manufacturing. Under the revised definition, intermediate hemp-derived cannabinoid products must contain no more than 0.3 percent total THC on a dry weight basis after decarboxylation. During CBD extraction and refinement, crude oil and distillate routinely exceed this threshold. A manufacturer may produce a final product that meets the 0.4 milligram container cap, but the intermediate materials used in production would not qualify as hemp under federal law after November 2026.

# BEI Program Under Medicare

On March 20, 2026, the Centers for Medicare and Medicaid Services (CMS) published a new Beneficiary Engagement Incentive (BEI) authorizing certain Accountable Care Organizations (ACOs) to furnish hemp cannabinoid products to qualified Medicare patients. The program is administered through CMMI, the agency's research and innovation arm, and is available to ACOs participating in one of three models: ACO REACH, and the Enhancing Oncology Model (EOM), which may begin participating April 1, 2026, and the Long-term Enhanced ACO Design Model (LEAD), which launches January 2027.

The program is not a retail model. Products move directly from a physician or network pharmacy to the patient; there is no dispensary, storefront, or direct-to-consumer sale. An ACO must apply, receive CMS approval, and arrange a compliant product supply before furnishing anything. Participation is voluntary. The ACO, not CMS, bears the cost - up to $500 per enrolled beneficiary per year.

Products must be orally administered; inhalables are excluded. The THC limit is 3 milligrams per serving, with delta-8, delta-9, delta-10, and THCA all counting toward that figure. Products must be formulated from hemp, and only cannabinoids produced or capable of being produced naturally are permitted; synthetic cannabinoids are excluded. Beginning November 13, 2026, products must comply with the revised federal standard of 0.4 milligrams total THC per container established by P.L. 119-37. CMS has stated on the record that it will adjust its program criteria accordingly when that law takes effect.

The program's near-term reach will likely be modest. Products must also be state and locally compliant, and most states have not enacted legislation enabling ACOs to furnish hemp products under this framework, creating a legal gap that limits which organizations can meaningfully participate. In addition, products must comply with federal law after the hemp definition change limits hemp products to no more than .4mg THC per package, which changes on November 12, 2026. Published guidance does not specify testing analytes, passing thresholds, methodology, or laboratory accreditation requirements, which is a material gap for a program built around product safety. And practitioners are being asked to make clinical decisions about a product category lacking FDA approval and with limited published pharmacokinetic data.

The program's greatest long-term significance may be the data it generates. If participating ACOs document cost savings or clinical outcomes, that evidence could inform future policy action for cannabinoid products through both CMS and Congress. It is also the federal government's first formal acknowledgment that non-intoxicating hemp products have a legitimate role in health care - a meaningful signal, even if the program's initial scale is limited.

### The HEMP Act

On January 22, 2026, Representatives Morgan Griffith (R-VA) and Marc Veasey (D-TX) introduced the Hemp Enforcement, Modernization, and Protection Act (H.R. 7212), which proposes a federal regulatory framework for hemp-derived cannabinoid products through FDA. The bill's CBD-specific provisions would direct FDA to initiate a rulemaking process to establish milligram limits for cannabinoid products. If FDA fails to finalize rules within three years of enactment, statutory backstop limits would take effect automatically.

In addition to a framework for CBD, the measure would also allow up to 5 milligrams THC per serving and 50 milligrams THC per package for intoxicating cannabinoid content, making the bill closer to a legalization bill than a viable path for CBD. It's not clear the measure will advance in its current form.

# Recommendations For States

States that have built regulatory frameworks for intoxicating hemp products should ensure those frameworks do not inadvertently interfere with compliant, non-intoxicating CBD products. Total THC standards designed to capture intoxicating products can have the unintended effect of restricting products that contain trace THC solely as a byproduct of extraction from hemp biomass, not as a feature of the final product. State definitions should clearly distinguish between products designed to deliver a THC-like effect and products that happen to contain residual THC at levels below any reasonable threshold for intoxication.

States should also consider whether their frameworks provide a viable path for CBD manufacturers to continue operating during and after the federal transition. This includes ensuring that state-level intermediate product standards do not create additional compliance burdens beyond what federal law requires (unless intended), and that testing and labeling requirements are calibrated to non-intoxicating products rather than applying cannabis-grade oversight to products with no meaningful intoxicating potential. Section 10 of this report includes specific recommendations organized by state regulatory posture.

### What Remains Unresolved

Several significant questions remain open. P.L. 119-37 requires FDA to publish lists of naturally occurring cannabinoids, THC-class cannabinoids, cannabinoids with similar effects to THC, and a clarified definition of "container" within 90 days of enactment. That deadline was February 10, 2026. As of this writing, the agency has not published those lists. Until it does, the industry lacks clarity on which cannabinoids count toward the container cap and how "container" will be interpreted for compliance purposes.

The pending Farm Bill (H.R. 7567, filed February 13, 2026) reinforces the P.L. 119-37 direction by adopting total THC standards for agricultural production, but it does not create a consumer product pathway for CBD. The House Agriculture Committee's draft carries language requiring that hemp cannabinoid products contain no "quantifiable amounts" of total THC as determined by HHS in consultation with USDA. How those agencies interpret that standard will determine whether non-intoxicating CBD products with trace THC remain viable as hemp products or are swept into the controlled substances framework alongside genuinely intoxicating products.

> P.L. 119-37 and the executive order have restored federal intent to its original direction, but the consumer product framework that was always supposed to accompany the agricultural program still does not exist. Until Congress creates it, CBD's potential remains unrealized.

SECTION 5

# How States are Regulating Hemp

## Key Takeaways

- 30 states regulate hemp intoxicants, 14 have effectively banned them, and 7 have no meaningful framework
- Among regulated states, strong consensus has formed: over 90 percent require age 21+, third-party testing, manufacturer licensing, and synthetic cannabinoid bans
- States diverge sharply on potency limits (1 mg to 15 mg per serving) and retail access models (dispensary-only vs. general retail)
- Six regulatory archetypes have emerged: Bans, Age-Gated, Hemp Licensing, Cannabis-Only, Hybrid/Carve-Out, and Unregulated

 

# The State Landscape

As of early 2026, every state has either addressed or attempted to address the challenges related to hemp intoxicants. Thirty states have built some form of regulatory framework for hemp-derived intoxicants, ranging from robust cannabis-equivalent systems to age restrictions with limited oversight. Fourteen states have effectively prohibited these products, whether through statute, controlled substance scheduling, or executive action. The remaining seven states have no meaningful regulatory framework, leaving products available in gas stations, convenience stores, and online with virtually no consumer protections.

This Section maps the full landscape. It examines six distinct regulatory archetypes that states have adopted, identifies where a strong policy consensus has emerged among regulated states, highlights the areas where approaches diverge sharply, and assesses how state frameworks measure up against P.L. 119-37, the federal law that takes effect in November 2026 (covered in detail in Section 1). For THC beverage-specific regulatory models, see Section 8.

## Six Regulatory Categories

ATACH classifies state approaches to hemp-derived intoxicants into six archetypes based on how each state answers a set of core regulatory questions: Does the state use a total THC standard? Does it ban synthetic and converted cannabinoids? Does it require products to be sold through licensed cannabis dispensaries or allow broader retail access? Are testing and labeling standards comparable to the state's cannabis program? These questions, taken together, determine both the level of consumer protection a state provides and how well its framework will survive the November 2026 federal transition.

## Bans

Fourteen states have effectively banned intoxicating hemp-derived products through one or more legal mechanisms: adopting a total THC standard for hemp, banning synthetic and converted cannabinoids, or scheduling tetrahydrocannabinols broadly enough that hemp-derived THC is captured under the state controlled substances act. These include Arkansas, Arizona, Idaho, Indiana, Kansas, Montana, North Dakota, South Dakota, Vermont, Wyoming, and the District of Columbia.

Some states in this group, like Delaware, technically prohibit these products through their scheduling statutes but continue to see products on shelves due to non-enforcement. This archetype has the fewest steps to achieving federal alignment post 2026, with no parallel hemp intoxicants market to unwind.

## Age-Gated

Age-Gated states allow hemp intoxicants to be sold outside of cannabis dispensaries but impose a minimum purchase age (typically 21+), basic labeling requirements, and, in some cases, limited testing obligations. These states generally have not built cannabis-equivalent manufacturing or seed-to-sale tracking systems. The primary consumer protection is the age restriction. Products are often available in convenience stores, smoke shops, and general retail alongside non-intoxicating goods.

The risk profile includes inconsistent potency, inaccurate labeling, limited quality assurances, and ongoing youth access. Alabama, Florida, Georgia, and Mississippi are among the states in this archetype.

### Hemp Licensing

These states have created a dedicated licensing regime for hemp-derived intoxicants that is separate from the state's cannabis program. Manufacturers, processors, and sometimes retailers must hold specific permits. Testing and labeling requirements exist but may fall short of cannabis-program equivalency. Because the hemp licensing system operates on a parallel track, it often lacks the enforcement infrastructure, seed-to-sale tracking, and penalty structures that cannabis programs have developed over years. Post-2026, the viability of these frameworks depends on whether they can demonstrate the kind of regulatory rigor that federal enforcement will expect. Texas, Tennessee, Kentucky, Louisiana, and Oklahoma operate variations of this model.

### Cannabis-Only

Cannabis-Only states channel all intoxicating THC products into the existing cannabis dispensary system. Products must meet the same testing, labeling, manufacturing, and tracking standards that apply to cannabis flower and edibles. Source material is regulated through grow or cultivation licenses and retail sales occur only through licensed dispensaries. This archetype offers the strongest consumer protection and the clearest post-2026 alignment, since products are already regulated and controlled. Colorado, Oregon, Washington, Nevada, Michigan, Ohio, and Maryland are prominent examples. Arizona and the District of Columbia also channel hemp intoxicants into cannabis systems, but through prohibition rather than integration.

### Hybrid and Carve-Out

Hybrid states maintain a cannabis program but allow certain hemp-derived products, typically lower THC edibles or beverages, to be sold through licensed non-dispensary retailers. Connecticut, New York, and New Jersey have adopted versions of this model. The appeal is flexibility: it creates a pathway for products like THC beverages to reach consumers through alcohol-licensed or general retail channels. The risk is regulatory fragmentation and undefined enforcement coordination. Two parallel systems create enforcement complexity, and businesses operating in the non-dispensary channel may face 280E exposure after November 2026 (see Section 2) even if THC products only represent a small fraction of their overall business. The strength of this archetype depends on whether the carve-out is effectively limited or becomes a de facto second retail channel.

### Unregulated and Open Market

Seven states have no meaningful regulatory framework for hemp-derived intoxicants. Products are sold in gas stations, smoke shops, vape stores, and online with no age restrictions, testing requirements, licensing, or potency controls. Illinois, Missouri, North Carolina, Nebraska, Pennsylvania, South Carolina, and Wisconsin fall into this category. Some of these states have active cannabis legalization or hemp regulation bills pending (see Section 7), but as of early 2026, the consumer protections are effectively zero. States in this archetype face the most abrupt transition when P.L. 119-37 takes effect, as there is no existing regulatory infrastructure to adapt.

# Where Consensus Is Forming

Despite the diversity of approaches, a clear policy consensus has emerged among the 30 states that regulate hemp intoxicants. On five foundational policy questions, supermajorities have emerged.

| Policy Area | States | Detail |
|---|---|---|
| Testing required | 30 / 30 | Universal among regulated states. Most require third-party lab COAs covering potency, pesticides, heavy metals, and microbials. |
| Manufacturer licensing | 28 / 30 | Only MD and TX lack formal manufacturer licensing, though TX has proposed rules pending. Infrastructure mirrors cannabis seed-to-sale systems. |
| 21+ minimum age | 27 / 30 | Three states set the floor at 18 or have no age requirement: MA, NM, OK. |
| Total THC standard | 27 / 30 | Includes THCA, closing the high-THCA flower gap. Three states still use the delta-9-only standard: GA, KY, NM. |
| Synthetic/converted ban | 26 / 30 | Four states remain silent on converted cannabinoids: GA, KY, OK, TX. P.L. 119-37 will close this gap federally. |

**Note**: Denominators reflect the 30 regulated states only. Several states are actively considering legislation to align with the new federal definition in 2026, which is not yet reflected in these figures.

> The direction of travel is clear: among states that have chosen to regulate, the foundational policy questions are largely settled. The remaining gaps are concentrated in a small number of states.

# Where Consensus Is Forming

While consensus exists on age restrictions, and the need for testing, states diverge sharply on how much THC should be available in a single serving. Edible potency limits range from New York's 1 mg per serving to Tennessee's 15 mg per serving. Beverage limits show similar variance, from Hawaii's 0.5 mg per serving to Tennessee's 15 mg per serving. For context, P.L. 119-37 sets a 0.4 mg total THC per container. And while container has yet to be defined by the FDA, current state serving size allowances often vary from the federal guideline. The full potency spectrum is detailed in the table below. The range of potency restrictions (both for edibles and beverages) are detailed in the table below.

| State | Edible (mg/srv) | Beverage (mg/srv) | Note |
|---|---|---|---|
| TN | 15 | 15 | Highest in the nation |
| AL | 10 | 10 | Adult-only retail |
| MN | 5 | 5 | Max 50 mg per package |
| KY | 2.5 | 5 | Beverage-only alcohol model (SB 202) |
| CO | 1.75 | 1.75 | Mandatory 15:1 CBD:THC ratio; out of state sales only |
| NY | 1 | 1 | 10 mg per package max |
| HI | 2.5 | 0.5 | Most restrictive beverage limit |
| NJ | 0.4 | 5 | Update to federal definition by Nov 2026 |

Federal reference: P.L. 119-37 sets a 0.4 mg total THC per container cap. Only NJ matches. See Section 1 for full details.

### Retail Access Models

How products reach consumers is one of the starkest points of divergence. Nine states require hemp intoxicants to be sold exclusively through licensed cannabis dispensaries, providing the tightest retail controls: Colorado, Oregon, Washington, Nevada, Michigan, Ohio, Maryland, Arizona, and the District of Columbia. While four states have created licensed adult-only retail channels outside of dispensaries: Alabama, Connecticut (for higher-potency products), New Jersey, and Tennessee. Kentucky, New Jersey (through a beverage carve-out), and Rhode Island allow sales through alcohol-licensed retailers, applying existing alcohol distribution infrastructure. And thirteen states permit sales through general retail with some form of licensing, including Alaska, Florida, Georgia, Hawaii, Louisiana, Minnesota, Mississippi, New York, Oklahoma, Texas, Utah, Virginia, and West Virginia. Only 21 of the 30 regulated states require any form of retailer licensing or registration for hemp products.

# Key Gaps In State Frameworks

Even among the 30 regulated states, significant gaps remain. Here are the most consequential shortfalls.

| Gap | States | Why It Matters |
|---|---|---|
| Delta-9-only THC standard | 3 / 30 | GA, KY, NM. Leaves the door open for high-THCA flower products. Misaligned with federal total THC standard. |
| No retailer licensing | 9 / 30 | No point-of-sale oversight. Products reach consumers through channels with no compliance obligations. |
| No child-resistant packaging | 16 / 30 | Majority of regulated states lack this basic consumer safety requirement. A gap that will draw scrutiny. |
| No intoxication warning labels | 17 / 30 | No notice that the product may impair. Over half of regulated states omit this. |
| Seed-to-sale tracking | 0 / 30 | No regulated state has implemented comprehensive tracking for hemp intoxicants comparable to cannabis programs. |

### Federal Alignment Scorecard

P.L. 119-37 establishes five key parameters that will define federal compliance after November 2026. The scorecard below measures how the full landscape of 51 jurisdictions (50 states plus D.C.) align with each parameter. The gap between state-level regulation and federal requirements is significant in several areas.

| P.L. 119-37 Element | State Alignment |
|---|---|
| Total THC standard (incl. THCA) | 36 jurisdictions aligned; 15 still use the delta-9-only standard. |
| 0.4 mg per container threshold | New Jersey. |
| Synthetic/converted cannabinoid ban | 40 jurisdictions ban or restrict; 11 have no ban. |
| Post-2026: intoxicating hemp = cannabis | 13 states already channel hemp intoxicants into cannabis systems. The remaining 37+ will need to adapt. |
| Interstate commerce prohibition | 30 states allow online sales across state lines, a practice that becomes federally unlawful after November 2026. |

## Federal Alignment Scorecard Continued

These inconsistencies illustrate the broader gaps in the regulatory framework that characterize the current state landscape. A patchwork of varying definitions, testing standards, and enforcement postures means that a product that is legal and compliant in one state may be illegal in an adjacent state, and that consumers and businesses cannot rely on any consistent national standard.

One notable example of those gaps involves state production policies. Colorado, among other states, has prohibited the manufacture and sale of intoxicating hemp products within its borders while continuing to allow their exportation to other states. This approach -- restricting in-state production while permitting outbound commerce -- creates negative externalities from neighboring states and does nothing to address the consumer safety concerns that motivated the production restriction in the first place. A coherent federal or multi-state framework would need to address whether production restrictions can be paired with open export policies without undermining the regulatory goals they are intended to serve.

# The Tax Landscape

A growing number of states have imposed excise or special tax structures on hemp-derived intoxicants, often mirroring their cannabis tax frameworks. Washington applies a 37 percent excise tax, the highest in the nation. California taxes at 19 percent through its cannabis excise structure following AB 8. Colorado applies its 15 percent retail cannabis tax. Oregon taxes at 17 percent through the OLCC. At the lower end, Louisiana imposes a 3 percent excise plus standard sales tax, and Connecticut charges a flat $1 per container fee on beverages only.

Several states have adopted novel approaches. Tennessee imposes a $0.02 per milligram THC wholesale tax plus a $4.40 per gallon and $50 per ounce flower levy. West Virginia applies an 11 percent privilege tax plus a per-milliliter vape tax. Minnesota and Ohio each impose 10 percent excise taxes aligned with their cannabis programs. Alabama also taxes at 10 percent.

### The 280E Warning

Tax policy intersects critically with the federal transition. After November 2026, businesses selling products that meet the federal definition of cannabis will be subject to IRC Section 280E, which denies ordinary business deductions to any enterprise trafficking in Schedule I controlled substances. This applies to the entire enterprise, not individual product lines. A retailer, alcohol company, or convenience chain that sells hemp-derived intoxicants above the 0.4 mg cap could lose the ability to deduct rent, payroll, and operating expenses across its entire business. For a detailed analysis of 280E exposure, see Section 2.

> States have built regulatory infrastructure at an accelerating pace, and despite differences, the policy consensus among regulated states is remarkably strong. But the November 2026 federal deadline will test every framework. No state, however well-regulated, can fully insulate its businesses from limitations without a federal pathway.

### Bottom Line

Thirty states have demonstrated that hemp-derived intoxicants can be regulated. Testing, manufacturer licensing, age-gating, total THC standards, and synthetic bans are typically baked into regulatory frameworks. The remaining debates, over potency limits, retail access models, and product-type restrictions, reflect legitimate policy differences related to risk tolerance and market structure.

SECTION 6

# Enforcement

## Key Takeaways

- At least 24 states have taken enforcement action, using four legal theories: controlled substances, consumer protection, executive authority, and regulatory compliance
- 39 state attorneys general jointly urged Congress to act, arguing state enforcement alone cannot address an interstate market
- Jurisdictional fragmentation is the most persistent challenge — hemp intoxicants fall between agriculture, health, cannabis, and law enforcement agencies
- Courts have consistently upheld state regulatory authority, including Virginia's Fourth Circuit ruling and Indiana's federal dismissal directing challenges to state courts
- Enforcement resources are structurally outmatched: market entry is cheap and fast, while enforcement is expensive and slow

 

# The Enforcement Landscape

Enforcement against unregulated hemp-derived intoxicants has accelerated sharply since 2024. At least 24 states have taken some form of enforcement action, ranging from targeted retail raids to comprehensive statewide compliance campaigns. The pace increased further in 2025, just as a bipartisan coalition of 39 state attorneys general sent a joint letter to Congress arguing that hemp-derived intoxicants could not be effectively regulated at the state level due to interstate commerce, and urging federal action. That letter contributed to the passage of P.L. 119-37 in November 2025.

This chapter examines enforcement not state by state, but by the legal theories and institutional strategies that states are deploying. We see the same legal arguments recur across states, the same institutional challenges arise regardless of geography, and the same gaps undermine even the most aggressive efforts.

## Four Legal Theories

State enforcement actions against hemp-derived intoxicants rest on four distinct legal theories, often used in combination. The choice of theory reflects each state's statutory landscape, the agency leading enforcement, and the political constraints under which officials operate.

**Controlled Substances.** The most direct theory: the state's controlled substances act captures hemp-derived THC, either because tetrahydrocannabinols are scheduled separate from cannabis (making the hemp carve-out irrelevant), or because the state has adopted a total THC standard that pulls high-potency hemp products into the controlled substances definition. Indiana's Attorney General relied on this theory when issuing an opinion that delta-8 THC is a Schedule I controlled substance under state law, a position that survived initial legal challenge when a federal judge dismissed the 3Chi/Midwest Hemp Council lawsuit in March 2025. Kansas, Idaho, and North Dakota take similar positions. Delaware's scheduling statute captures tetrahydrocannabinols broadly enough that hemp-derived THC products are technically illegal regardless of source, though enforcement has been minimal.

**Consumer Protection.** Where controlled substances statutes do not clearly reach hemp-derived products, attorneys general have turned to consumer protection and merchandising practices laws. Missouri's enforcement is an example of this approach. For four consecutive years, the legislature failed to pass a regulatory framework, so the Attorney General anchored actions to the Missouri Merchandising Practices Act. Initial cease-and-desist letters to 18 retailers expanded into broader investigations and, in February 2026, the first lawsuit: against a St. Louis smoke shop selling THC edibles in packaging mimicking popular candy brands, with some products containing up to 1,000 mg of THC per bar. The consumer protection theory allows enforcement even when specific hemp intoxicants legislation does not exist, but it is inherently reactive, targeting the most egregious cases rather than establishing systemic compliance.

**Executive Authority.** A growing number of governors have used emergency executive orders to impose restrictions when legislatures have been unable or unwilling to act. Texas Governor Abbott's Executive Order GA-56 (September 2025) is the most prominent example, banning delta-8 and delta-10 inhalables, prohibiting sales to anyone under 21, and directing multiple state agencies to begin enforcement within weeks. Ohio Governor DeWine imposed a 90-day emergency ban in October 2025, targeting products sold in gas stations and unlicensed retailers. Missouri Governor Parson's Executive Order 24-10 attempted to ban intoxicating hemp as adulterated food, though enforcement stalled due to a "definitional gridlock" between the order's language and state statutory definitions. The executive authority model provides speed, but its durability depends on whether legislatures follow with permanent statutory frameworks.

**Regulatory Compliance.** In states with existing hemp or cannabis regulatory frameworks, enforcement operates through compliance inspections, license revocations, and administrative penalties rather than criminal prosecution. Virginia's Department of Agriculture and Consumer Services (VDACS) established a dedicated Office of Hemp Enforcement in 2023 and has maintained one of the most aggressive compliance campaigns in the country: over 400 inspections, nearly $10.8 million in fines between July 2023 and June 2024, and a retailer registration requirement effective November 2024. Connecticut's Department of Consumer Protection has built a similarly robust system. Tennessee's Alcoholic Beverage Commission (TABC) began enforcing licensing and testing requirements for THC beverages. Florida's Department of Agriculture conducted Operation Safe Summer in mid-2025. This theory produces the most systemic enforcement, but it requires a statutory foundation that many states lack.

### Enforcement Basis by State

| State | Lead Agency | Primary Theory | Key Actions |
|---|---|---|---|
| **Virginia** | VDACS | Regulatory compliance | 400+ inspections, $10.8M in fines, retailer registration |
| **Texas** | TABC / DSHS | Executive authority | GA-56 order, vape ban, 21+ age gate, multi-agency enforcement |
| **Missouri** | AG Office | Consumer protection | C&D letters, investigations, first lawsuit Feb 2026 |
| **Indiana** | AG Office | Controlled substances | AG opinion, 3Chi lawsuit dismissed, state court pending |
| **Florida** | Dept. of Agriculture | Regulatory compliance | Operation Safe Summer, total THC standard adopted |
| **Ohio** | Governor's Office | Executive authority | 90-day emergency ban, legislative follow-up pending |
| **Connecticut** | DCP | Regulatory compliance | Tiered framework, systematic inspections, penalty structure |
| **Nebraska** | AG Office | Controlled substances | Over 200 retailers targeted, product seizures |
| **Arizona** | AG Office / ADHS | Controlled substances | AG opinion (2024), compliance deadline, dispensary channeling |
| **N. Carolina** | ALE | Regulatory compliance | Retail raids (2024), legislative framework pending |

**Note**: Table reflects a representative sample. At least 24 states have documented enforcement activity.

# Institutional Challenges

### The Jurisdictional Gap

The most persistent enforcement challenge is jurisdictional confusion. Hemp-derived intoxicants straddle the boundaries of multiple regulatory agencies. In most states, agriculture departments oversee hemp cultivation, health departments regulate food products, cannabis control boards govern dispensaries, and law enforcement handles controlled substances.

Intoxicating hemp products do not fit neatly into any single agency's mandate. The result is enforcement gaps: agriculture departments lack authority over retail consumer products, health departments may not have jurisdiction over substances that are arguably controlled, and cannabis regulators often have no statutory authority over products sold outside the dispensary system. Oklahoma's OMMA, for instance, has publicly stated that current state law explicitly excludes delta-8 and delta-10 from the definition of cannabis, preventing the agency from regulating these substances even within its own dispensary system.

### Enforcement Asymmetry

Even in states with clear legal authority, enforcement resources are vastly outmatched by the scale of the market. Virginia's campaign, one of the most aggressive in the country, has struggled to keep pace with the proliferation of retail outlets. Nebraska's Attorney General targeted over 200 retailers but acknowledged that new shops open faster than enforcement can reach them. The fundamental asymmetry is structural: enforcement is expensive, slow, and adversarial, while market entry for hemp intoxicants is cheap, fast, and largely unimpeded in states without licensing requirements.

### Interstate Commerce

State enforcement is further complicated by the interstate nature of the hemp intoxicants market. Products manufactured in permissive states are shipped nationwide via online sales, arriving in jurisdictions where they may be illegal. A state attorney general can seize product from a local retailer, but the manufacturer, operating legally in another state, is beyond reach. The 39-attorney-general coalition letter to Congress cited this dynamic specifically, arguing that state-level enforcement is structurally inadequate for a product that moves freely across state lines. P.L. 119-37 will provide federal authority to address interstate commerce after November 2026, but until then, the enforcement burden falls almost entirely on individual states.

# Litigation And Legal Challenges

Enforcement actions have generated a wave of litigation, with outcomes that vary by jurisdiction and legal theory. The most significant cases offer a preview of the legal arguments that will shape the post-2026 landscape.

**Virginia's Fourth Circuit ruling** upheld the state's regulatory authority, emboldening VDACS to intensify its compliance campaign. The decision affirmed that states retain broad power to regulate hemp-derived products within their borders, even products that technically qualify as hemp under the federal definition.

**Indiana's 3Chi dismissal** removed federal court as a venue for challenging state-level hemp enforcement. When Judge Sweeney ruled in March 2025 that the question of delta-8's legality was fundamentally a matter for state courts, it directed the industry's legal challenges into forums where state attorneys general hold procedural advantages.

**Missouri's definitional gridlock** illustrates the limits of executive authority. Governor Parson's attempt to ban intoxicating hemp as adulterated food ran aground because state law explicitly prohibits considering food adulterated for containing industrial hemp.

**Tennessee's injunction and resolution** shows that regulatory transitions create litigation risk even in states actively building frameworks. A December 2024 injunction delayed implementation of Tennessee's hemp licensing rules, but the state eventually worked through the challenge and TABC began enforcement of beverage licensing and testing requirements.

> Enforcement has moved faster than legislation in most states. Attorneys general, governors, and regulatory agencies have been forced to act with the tools available, often imperfect, because legislatures have not kept pace with the market. P.L. 119-37 will provide a federal floor, but effective enforcement will still require state-level infrastructure, dedicated agencies, and adequate funding.

### Bottom Line

The enforcement landscape reveals two things. First, states are not waiting. Whether through controlled substances theories, consumer protection actions, executive orders, or regulatory compliance campaigns, public officials across the political spectrum have concluded that the unregulated hemp intoxicants market poses unacceptable risks. Second, state enforcement alone is structurally insufficient. Interstate commerce, jurisdictional fragmentation, resource asymmetry, and statutory gaps limit what even the most aggressive state campaigns can achieve. The passage of P.L. 119-37 provides the federal authority that 39 attorneys general requested, but the period between now and November 2026 will test every state's enforcement capacity. Section 9 addresses the specific pressures that enforcement agencies will face during that transition.

# Shipping And Common Carriers

### Shipping and Common Carriers

The shipment of hemp-derived products through common carriers - including USPS, UPS, FedEx, and similar services -- has become a significant compliance and enforcement concern. Federal law does not generally prohibit the shipment of compliant hemp products through interstate commerce.

One of the more intractable challenges facing states that have chosen to restrict or prohibit intoxicating hemp products is interstate shipment. Because products that meet the federal definition of hemp are legal to ship through interstate commerce, a state ban on in-state sales does not prevent products from being mailed directly to consumers from outside the state.

Common carriers - including USPS, UPS, and FedEx - are not required to enforce state-level restrictions on federally legal hemp, and in most cases do not. A consumer in a state that has banned delta-8 gummies can order them online from out-of-state, and receive them by mail with no meaningful point of interdiction.

This dynamic significantly undermines the practical effect of state prohibition. It also creates an uneven competitive landscape: compliant in-state retailers face competition from out-of-state online sellers exempt from state rules. The problem is structurally similar to challenges states have faced with alcohol direct-to-consumer shipping and online tobacco sales, both of which required federal legislative intervention to give states meaningful enforcement tools. Limitations on a state's ability to control their own markets, was one of the key issues raised by Congress in its consideration of P.L. 119-37.

SECTION 7

# Pending State Legislation in 2026

## Key Takeaways

- More than 45 bills across 30+ states address hemp intoxicants in current and recent sessions — an unprecedented legislative surge
- Bills fall into three categories: federal alignment (adopting the 0.4 mg cap), cannabis-system channeling, comprehensive hemp restrictions
- Regulatory bills cluster around three models: the alcohol-regulator approach, beverage-specific carve-outs, and standalone hemp frameworks
- Synthetic and converted cannabinoid bans are near-universal across all bill types, and age 21 is the consensus floor
- THC beverages have emerged as a distinct legislative category with their own policy conversation, separate from other hemp intoxicants

# State Surge, Driven By Early Federal Inaction

The volume of state legislation addressing intoxicating hemp products in 2025 and early 2026 is unprecedented. More than 45 bills across at least 30 states have been introduced in the current and most recent legislative sessions, ranging from outright prohibitions to comprehensive regulatory frameworks. This surge did not happen in a vacuum. For years, the federal government failed to address the consumer product implications of the 2018 Farm Bill's hemp definition, leaving states to fill a regulatory void that grew wider with each passing session. By the time Congress acted with P.L. 119-37 in late 2025, dozens of states had already begun crafting their own solutions, and the passage of the federal law has only accelerated that trend.

The result is a diverse and rapidly evolving landscape. Some states are moving to align with the new federal definition. Others are building standalone regulatory systems. Still others are channeling hemp intoxicants into their existing cannabis programs. And a handful are attempting to carve out space specifically for hemp-derived THC beverages while restricting other product categories.

## Bills That Restrict

A significant share of pending legislation aims to narrow or eliminate the retail market for intoxicating hemp products. These bills generally fall into three categories: federal alignment measures that adopt the P.L. 119-37 definition and potency caps before the November 2026 deadline; cannabis-system channeling bills that route hemp intoxicants into existing licensed cannabis dispensaries; and systems that restrict the products entirely.

**Federal Alignment.** Several states are proactively adopting the federal 0.4 mg total THC per container standard and total THC definition ahead of the federal effective date. New Jersey has already enacted S4509 into law, becoming one of the first states to formally align with the new federal definition, with a compressed product liquidation timeline that phases out noncompliant products well before the November 2026 federal deadline. South Dakota has introduced similar alignment measures. Missouri passed a hemp measure that restricted intoxicating products tied to the federal definition. And SB-49 in Pennsylvania would adopt the federal definition. Indiana and Wisconsin both introduced bills that would have aligned hemp law with the new federal definition, but failed to pass after much debate.

**Cannabis-System Channeling.** States with established adult-use cannabis markets are increasingly directing intoxicating hemp products into their licensed systems. California's AB 8 and Ohio's SB 56 are the most prominent examples. SB 56 was enacted and took effect March 20, 2026, requiring hemp intoxicants to be sold exclusively through licensed cannabis dispensaries. Maryland and Michigan have pursued similar approaches through a combination of legislation and enforcement action. This model protects the revenue base of licensed cannabis operators and ensures that intoxicating THC products are treated equally under the law.

**Comprehensive Restrictions.** Outright bans remain the least common approach. Montana enacted the only comprehensive ban in 2025, combining a 0.5 mg per serving cap with a delta-9 sales prohibition in a belt-and-suspenders approach that eliminates roughly 80 to 90 percent of the existing retail market. South Carolina, Mississippi, and Alabama have introduced prohibition bills for 2026. These tend to surface in states without adult-use cannabis programs where lawmakers view hemp intoxicants as an end-run around their state's position on cannabis legalization.

### Bills That Regulate

On the other side of the ledger, a growing number of states are choosing to build regulatory frameworks that allow intoxicating hemp products to remain legal under defined conditions. These bills typically include age restrictions, manufacturer and retailer licensing, testing and labeling standards, potency limits, and retail channel controls. Three models dominate.

**The Alcohol Model.** The fastest-growing legislative approach places hemp products, particularly beverages, under the jurisdiction of state alcoholic beverage commissions or liquor control boards. Tennessee's HB 1376, Alabama's HB 445, New Hampshire's SB 485, Wisconsin's SB 681, Missouri, and Oklahoma's SB 2092 all follow variations of this model. The logic is straightforward: alcoholic beverage regulators already operate three-tier distribution systems, enforce age restrictions, conduct retail inspections, and manage product safety standards. Applying that infrastructure to hemp-derived THC beverages avoids building a new regulatory apparatus from scratch. Tennessee's version adds a 2-cent-per-milligram wholesale cannabinoid tax and prohibits all online and delivery sales.

**Beverage-Specific Carve-Outs.** A related but distinct approach creates a regulated lane exclusively for hemp-derived THC beverages while restricting or banning other intoxicating hemp product categories. Kentucky enacted a beverage-focused framework in 2025 through the regulatory process initiated by SB 202, establishing a three-tier alcohol-model distribution system with University of Kentucky testing oversight. New York's S8575 caps beverages at 5 mg THC per container with a 10 percent excise tax. Rhode Island and multiple competing Florida bills (SB 1368, HB 1409, SB 1678, HB 801) are pursuing similar beverage-specific approaches. In the last two years, THC beverages have emerged as a distinct regulatory category with their own legislative conversation, separate from the broader hemp intoxicants debate.

**Standalone Regulatory Frameworks.** Some states are building comprehensive regulatory systems that cover the full range of intoxicating hemp products, not just beverages. Connecticut's HB 6855 and South Carolina's HB 4759 both create licensing, testing, and retail frameworks, with its own cost structures. Illinois has competing bills (SB 20 for cannabis channeling, HB 64 for standalone regulation), reflecting an unresolved debate within the legislature about which model to pursue.

# What The Legislative Landscape Tells Us

Viewed as a whole, the 2025 and 2026 legislative activity reveals several patterns that hold regardless of which individual bills ultimately pass.

## Converging Consensus

**Synthetic and converted cannabinoid bans are near-universal.** Across nearly every bill, regardless of whether the overall approach is restrictive or regulatory, bans on synthetic, semi-synthetic, and chemically converted cannabinoids appear. Delta-8, delta-10, HHC, THC-O, and similar cannabinoids produced through CBD conversion are being excluded from legal markets at both the state and federal level simultaneously. The market for converted cannabinoids, which drove the initial hemp intoxicant boom, is closing.

**Age 21 is the floor.** Virtually every bill creating a regulatory framework sets the minimum purchase age at 21. The small number of states that initially set the age at 18 are moving to 21 in their 2026 sessions.

**Beverages have their own lane.** Perhaps the most significant development of the past two years is the emergence of hemp-derived THC beverages as a distinct regulatory category. What began with a handful of early-mover states like Minnesota and Kentucky has become a nationwide pattern. At least eight states have dedicated beverage carve-outs or beverage-specific legislation, and the alcohol-model regulatory approach is the fastest-growing legislative template. The beverage conversation is increasingly separate from the conversation about other intoxicating hemp products, with its own set of policy assumptions, regulatory models, and political dynamics.

## Diverging Approaches

Where states continue to diverge is on the fundamental question of market access. State bills that adopt the federal 0.4 mg cap prohibit intoxicating hemp products. Cannabis-channeling bills preserve access but only through existing dispensaries, creating parity between intoxicating cannabinoids regardless of source. Beverage carve-outs create narrow but viable retail lanes. And standalone frameworks attempt to preserve broader market access under new rules. These are not just different regulatory mechanisms; they represent fundamentally different answers to the question of whether intoxicating hemp products should continue to exist and if parity with intoxicating cannabis products is appropriate.

> The legislative record does not yet tell us which approach will prevail. What it does tell us is that the status quo over the past few years, an unregulated market operating in a federal gray area, is ending. The open question for 2026 is not whether states will act, but how.

### Current as of this Report

Two additional bills passed their state legislatures in the days before this report's publication and await their governors' signatures. In Missouri, HB 2641, the Intoxicating Cannabinoid Control Act, passed the Senate 25-5 on April 1, 2026, following an earlier House vote of 109-34. The bill would align Missouri's law with the P.L. 119-37 total THC standard, with an effective date of November 12, 2026, moving the state from the unregulated column into the regulated category. In Georgia, SB 33 passed the House after the chamber agreed to Senate amendments on April 2, 2026. The bill establishes a total THC standard for hemp products, closing Georgia's existing gap on that foundational definition - also a significant shift toward tightening standards.

### Bottom Line

The volume of pending legislation confirms that state lawmakers across the political spectrum view the current hemp intoxicants market as unsustainable. The range of approaches reflects genuine disagreement about the right approach, but there is broad consensus that regulation is necessary. For industry stakeholders, the most constructive reading of this landscape is not which bills will pass but which policy mechanisms are gaining traction across multiple jurisdictions. The trends toward synthetic and converted cannabinoid exclusion, age-gating to 21 and up, and beverage-specific regulatory lanes are durable and likely to set the stage for whatever framework emerges on the other side of the federal transition.

SECTION 8

# THC Beverages From Hemp

## Key Takeaways

- THC beverages are gaining interest for a possible stand-alone regulatory system
- Three models are emerging: the alcohol-regulator model (Kentucky, Tennessee, Alabama), beverage-specific carve-outs (New York, Rhode Island), and general retail with beverage rules (Minnesota)
- Most THC in hemp-derived beverages is chemically converted from CBD, not naturally extracted — raising both the potency cap and converted-cannabinoid exclusion under P.L. 119-37
- No state's operational beverage limit is currently at or below the federal 0.4 mg per-container cap
- The federal law creates a challenge for the beverage industry: potency exceeds the cap, and the manufacturing process may independently disqualify the product

# THC Beverages Regulation

THC beverages occupy a unique space in the hemp intoxicants debate. Unlike edibles, vapes, tinctures, or concentrates, beverages come in a format consumers and regulators are already familiar with. A 12-ounce can is a known format and serving size. Onset times for beverages are typically faster and more predictable than edibles. And the format can fit into existing alcohol regulatory infrastructure, from retail licensing and distribution networks to age verification at the point of sale.

Legislators who are unwilling to allow unregulated hemp edibles or vapes in gas stations have shown some interest in a controlled beverage pathway, particularly when it mirrors the alcohol model they already oversee.

## Kentucky: A Working Beverage Model

Kentucky offers the clearest example of a state that chose to regulate hemp beverages through its existing alcohol infrastructure. SB 202, enacted in 2025, places hemp-derived beverages containing intoxicating cannabinoids under the jurisdiction of the Alcoholic Beverage Control Board and caps them at 5 mg of intoxicating cannabinoids per 12 ounces. The framework operates on a three-tier model (manufacturer, distributor, retailer) and restricts beverage sales to package stores (liquor retailers). Non-beverage hemp products remain under a separate health department framework.

Kentucky's path to this framework was not smooth. The state went through enforcement raids, litigation, emergency regulations, and a proposed moratorium before the legislature settled on a regulatory approach. Senate testing of hemp beverage samples through the University of Kentucky found THC amounts inconsistent with product labeling, reinforcing the case for mandatory testing and manufacturing oversight. The result is one of the few state frameworks that treats hemp beverages as a distinct, regulated product category within an established licensing and enforcement system.

## The Market Reality

THC beverages are the fastest-growing segment of the hemp-derived intoxicants market. Minnesota's operational framework (5 mg THC per serving, 50 mg per package, 21-plus, available at restaurants, grocery stores, and breweries) has demonstrated consumer demand and generated tax revenue. Multiple states are now considering beverage-specific carve-outs or alcohol-model regulation, even as they restrict or ban other hemp intoxicant product types.

However, the growth of this market comes with a significant and often overlooked manufacturing concern. The THC in hemp-derived beverages is, in most cases, not naturally occurring delta-9 THC extracted directly from the plant. It is converted from CBD through chemical processes using solvents, reagents, and acids. This is the same conversion chemistry that produces delta-8, delta-10, and other converted cannabinoids that Congress targeted in P.L. 119-37. Converted THC raises questions about byproducts, contaminant profiles, and manufacturing consistency that do not apply to naturally produced cannabinoids. Most consumers purchasing THC beverages are unaware that the THC in their drink could be synthetically derived from CBD rather than extracted from the cannabis plant, and few state regulatory frameworks require disclosure of the conversion process or track sourse material.

# How States Are Approaching Beverages

### Three Emerging Models

**The alcohol model.** Kentucky (SB 202), Tennessee (HB 1376 via TABC), and Alabama (HB 445 via ABC Board) place hemp products, including beverages, under alcoholic beverage commissions or liquor control boards. This approach uses familiar three-tier distribution (manufacturer, distributor, retailer), existing retail licensing, and established enforcement infrastructure. Tennessee's version is the most aggressive, adding a 2-cent-per-milligram wholesale cannabinoid tax and banning online and delivery sales. Alabama's framework is broader than beverages alone, covering all consumable hemp products through the ABC Board with a 10 mg per serving cap and retail limited to licensed shops, pharmacies, and large groceries. Several additional states, including Missouri (HB 2765/SB 993) and Oklahoma (SB 2092), introduced bills that would adopt similar alcohol-regulator models, but none have been enacted.

**The beverage carve-out.** New York (S8575), Rhode Island (SB 984), and several Florida proposals would create regulated lanes specifically for hemp-derived THC beverages while restricting or banning other product forms. New York's bill caps beverages at 5 mg THC per container with a 10 percent excise tax projected to generate over $50 million annually. Rhode Island's approach routes beverages through liquor stores while keeping other hemp intoxicants in the dispensary system. At the time of this report, a proposal in Massachusetts (S.2663) would span both the cannabis and alcohol regulatory structures, with single-serving beverages available through alcohol licensees and multi-serving products restricted to cannabis retailers.

**General retail with beverage rules.** Minnesota operates the broadest version of this model: 5 mg THC per serving, 50 mg per package, 21-plus age requirement, and sales permitted at restaurants, grocery stores, breweries, and liquor stores. The framework does not require beverages to go through cannabis dispensaries or alcohol-only retailers. This model maximizes market access but depends on robust testing and enforcement to maintain consumer safety standards across a wide retail footprint.

### The Potency Spectrum

Per-serving THC limits for beverages vary dramatically across states that have enacted regulations. The table below includes only operational frameworks; several pending bills (including proposals in New York, Rhode Island, and Massachusetts) would establish additional limits if enacted.

| State | Beverage (mg/serving) | Note |
|---|---|---|
| TN | 15 | Highest in the nation; TABC enforcement |
| AL, GA | 10 | Adult-only licensed retail |
| MN, LA | 5 | MN: most mature market; LA: 40mg/pkg max |
| KY | 5 | Alcohol three-tier; beverage-only framework |
| CT | 3 | Tiered moderate vs. high-THC system |
| OR, CO | 2 | CO: mandatory 15:1 CBD:THC ratio |
| NY | 1 | 10mg/package max |
| NJ | 1 | Updated to federal definition by November 2026 |
| HI | 0.5 | Most restrictive beverage limit in the nation |
| Federal (P.L. 119-37) | 0.4 mg/container | Effective Nov 2026; per container, not per serving |

The gap between where state markets are operating and where federal law is heading is the central tension in THC beverage policy.

SECTION 9

# The Transition Year

## Key Takeaways

- Banks, insurers, and payment processors are reassessing how they manage compliance obligations for businesses selling hemp intoxicants
- Liquidation of noncompliant inventory is anticipated in advance of November 2026
- After November, 280E tax exposure applies to the entire enterprise of any business selling products above the federal cap — not just individual product lines
- The federal redefinition creates a legal foundation for CBD products— states must ensure intoxicants regulation doesn't inadvertently interfere with non-intoxicating CBD

# The Deadline Is November; The Market Change Is Already Underway

P.L. 119-37 takes effect on November 12, 2026, one year after enactment. On that date, the federal definition of hemp is in effect: the total THC cap becomes 0.4 mg per container, and synthetic and chemically converted cannabinoids are removed from the definition of hemp. Products that do not meet the new standard become controlled substances under the Controlled Substances Act.

But the market is not waiting for November. Banks, payment processors, insurance carriers, and supply chain partners operate prospectively. They do not wait for a law to take effect before adjusting to the risks. Some financial institutions have already begun reviewing hemp-related accounts. Carriers have started asking questions about product lines. The pattern is familiar to anyone who has watched how the financial sector responds to shifting federal policy, and it will accelerate as the deadline approaches.

This Section examines the changes expected during the transition year, and the early signals that indicate how the transition is taking shape.

## What Changes Before the End of the Year

**Banking and Payments.** Financial institutions are typically the first to move when federal policy shifts. Banks and credit unions serving hemp businesses are conducting enhanced due diligence reviews, and some are exiting relationships with clients whose product lines will be noncompliant after November. Payment processors, already under tight scrutiny from card network compliance programs, are beginning to decline transactions for intoxicating hemp products. This mirrors what happened in the early years of state cannabis legalization: financial institutions pulled back before enforcement materialized, because the risk calculus changed the moment the law did. This same dynamic is playing out now, months ahead of the effective date.

**Contracts and Insurance.** Business relationships built around intoxicating hemp products are starting to fray. Supply contracts, distribution agreements, and licensing arrangements that assumed continued federal legality face renegotiation or termination as counterparties assess their post-November exposure. Insurance carriers are adding exclusions for hemp intoxicant operations or declining renewals. Commercial landlords leasing space to hemp retailers are reassessing those relationships. None of these actions require the November deadline to have already arrived; these are proactive measures by affiliated industries highly adept at adjusting to shifting risk criteria, and are likely to take effect far ahead of the November deadline.

## Federal Enforcement Capacity

What federal enforcement actually looks like after November remains an open question. Congressional researchers have noted that neither the FDA nor DEA have resources to police the hemp intoxicants market at a retail level. The FDA has not yet published the required cannabinoid scheduling lists, and the agency's enforcement track record on hemp since 2018 has been thin. Federal enforcement is likely to be selective, focused on manufacturers and distributors rather than individual retailers. States that have already built their own enforcement infrastructure will be far better positioned than those waiting on Washington.

# Reading The Early Signals

Several indicators point to how the transition is taking shape.

### Federal implementation is in a holding pattern

As of early 2026, USDA's hemp program still references the 0.3 percent delta-9 THC threshold rather than the new total THC standard, and the AMS form revision currently under review at OMB does not incorporate any P.L. 119-37 language. The law does not take effect until November, so the agencies are not technically behind schedule, but the practical effect is a forced pause: businesses and state regulators looking for federal guidance on how to prepare are not finding it yet. The FDA cannabinoid scheduling lists required under P.L. 119-37, however, are still forthcoming, and the longer detailed guidance takes to arrive, the less lead time the market has to adjust.

### States are not waiting

As Section 7 discusses, more than 45 bills across 30 states are addressing intoxicating hemp products in the current and most recent sessions. New Jersey has already enacted federal alignment legislation. Several states are building regulatory frameworks on their own timelines. State compliance requirements will likely be in place before federal requirements are fully articulated, creating a patchwork that multi-state businesses will need to navigate independently.

### The Definition as Inflection Point

Beyond its legal mechanics, the federal redefinition is functioning as something more fundamental: a clear indication of Congress' intent and an end to the definitional exploits that sustained the intoxicating hemp market since 2018. The delta-9-only loophole, the THCA flower workaround, the converted cannabinoid gray area: P.L. 119-37 addresses all of them. And even though the law has not yet taken effect, states are already adopting it as a standard. New Jersey has enacted it. Indiana is advancing it. Multiple states are referencing the federal total THC framework in their own 2026 bills. The federal definition is becoming the baseline, and states that continue to treat intoxicating products as hemp will increasingly be outliers. That shift is already happening, and it will only accelerate as November approaches.

### The Other Side of the Coin: CBD Finally Gets a Legal Foundation

The federal redefinition does more than close the door on intoxicating hemp products. It also creates a clear federal legal foundation for CBD for the first time. Since the 2018 Farm Bill, CBD has existed in a regulatory gray area: technically derived from legal hemp, but never formally authorized by the FDA as a food ingredient, dietary supplement, or consumer product. P.L. 119-37 resolves the first step - definitional ambiguity. Products that fall within the new hemp definition, including CBD that meets the total THC cap and does not contain synthetic or converted cannabinoids, will have unambiguous federal legal status. That must be resolved before the process can move further.

It also creates a new set of considerations for states. The definition means there will be CBD producers operating legally at every level of the supply chain: hemp farming, processing, manufacturing, and retail sales. Those operations will need regulatory frameworks, and outside of USDA's role in agricultural production, that responsibility will fall largely to the states. The challenge is calibration. As states move to regulate hemp intoxicants as the same or similar to cannabis, they need to ensure that they do not inadvertently make it impossible to operate a legal CBD business. Overly broad definitions, blanket THC bans that do not account for trace amounts, or licensing regimes designed for intoxicants that are applied to non-intoxicating products could create unintended conflict between state and federal law. Getting the intoxicants regulation right matters; so does making sure the non-intoxicating hemp market has room to function.

### The 0.4 mg THC Threshold is a Key Milestone

The 0.4 mg total THC per-container cap established by P.L. 119-37 is historically significant in a way that has received little attention. It represents the first time in American history that any level of THC has been expressly permitted, by the federal government, in a finished consumer product outside the pharmaceutical lane. Establishing this threshold simultaneously closes the “intoxicating hemp” loophole and acknowledges that trace-level THC in consumer products (not just plants) is permissible.

### Bottom Line

The 2018 Farm Bill created an unintended gray market for hemp intoxicants. Beginning November 12, 2026, intoxicating hemp products — whether derived from THCA flower, converted cannabinoids, or synthetic chemistry — are no longer hemp under federal law.

States are legislating at an unprecedented pace to ensure alignment come November, and the sector is adjusting. The opportunity ahead — a regulated CBD market, a normalized cannabis industry, and national standards built on years of state-level market data — prioritizes consumer protections and matures a nascent industry. As regulators and lawmakers look to the future, the solutions will depend on the desire for self-regulation, compliance, and working within a regulated system rather than outside it.

ATACH

# HEMP INTOXICANTS REPORT 2026



media@atach.org