

The battle over buzz: Federal and state crackdowns on intoxicating hemp products escalate

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Shortly after the 2018 Farm Bill legalized hemp, entrepreneurs began pushing the envelope in what they believed to be a legal gray area: intoxicating hemp-derived cannabinoid products like delta-8 tetrahydrocannabinol ("Delta-8 THC"), delta-10 tetrahydrocannabinol ("Delta-10 THC"), and other psychoactive derivatives distilled from hemp (which does not naturally contain those compounds in sufficient quantities to provide a "buzz").

These products flourished in what many perceived to be a gray area (mostly due to a lack of enforcement during a time that saw the expansion of state-legal recreational cannabis markets) and were being sold in gas stations, online stores, and even wellness boutiques nationwide.

But, as is often the case, these businesses have become victims of their own success. Now federal agencies and state legislatures have been moving aggressively to regulate, restrict, or ban these products outright amid growing concerns over safety, youth access, and regulatory evasion.

The perceived 2018 Farm Bill 'loophole'

Prior to December 2018, hemp and all hemp-derived substances (including cannabidiol or "CBD") were considered to be a form of marijuana subject to the federal government's most restrictive regulation under Schedule I of the Controlled Substances Act of 1970 ("CSA"). That changed on Dec. 20, 2018, when the 2018 Farm Bill was signed into law.

The 2018 Farm Bill removed hemp (a type of cannabis plant from the same genus as marijuana) from the definition of marijuana under the CSA, making hemp and all of its derivatives legal, so long as it contains less than 0.3% of delta-9 tetrahydrocannabinol (or "Delta-9 THC") by dry weight. See 7 U.S.C. § 1639o. Delta-9 THC is the primary psychoactive component found in marijuana.

The Farm Bill's definition of hemp, however, did not address the chemical conversion or extraction of other intoxicating cannabinoids from legal hemp material. Many entrepreneurs saw this as a loophole, which would allow them to sell

intoxicating hemp products legally (and without being subjected to the same strict laws governing the sale of state-legal cannabis in most states).

Importantly, not everyone agreed that the Farm Bill created such a "loophole," including the Drug Enforcement Administration ("DEA," <https://bit.ly/4eyunZ7>), which has taken the position that, while "naturally occurring" THC compounds found in hemp are covered by the Farm Bill, synthetically derived intoxicating compounds distilled from hemp do not fall under the Farm Bill's definition of "hemp" and instead meet the definition of THC under the CSA (making them Schedule I substances).

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Still, market participants have taken the position that, as long as such products meet the Delta-9 THC threshold for hemp when tested on a dry weight basis, they are "legal." And because there has been little to no enforcement in the field, intoxicating hemp products, such as Delta-8 THC and Delta-10 THC, have surged in popularity.

While federal regulators, including the Food and Drug Administration ("FDA," <https://bit.ly/4kpstvk>), have raised concerns about safety and labeling — particularly in products that resemble candy or snacks appealing to children — federal regulatory oversight of intoxicating hemp products has been limited, and federal courts have thus far interpreted the Farm Bill's language to shield these compounds from CSA enforcement when derived from legal hemp.

For example, both the 9th and 4th U.S. Circuit Courts of Appeals have ruled that hemp-derived Delta-8 THC products are federally legal provided they contain no more than 0.3% Delta-9 THC by dry weight (based on the definition of “hemp” in the 2018 Farm Bill).

The 4th Circuit went even further, affirming the legality of products containing intoxicating amounts of Delta-8 or Delta-10 THC and rejecting the DEA’s stance that tetrahydrocannabinol-O-acetate (or “THC-O”), a synthetic cannabinoid, is illegal. *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682 (9th Cir. 2022); *Anderson v. Diamondback Investment Group, LLC*, 117 F.4th 165 (4th Cir. 2024). It is not known how the Supreme Court, with its current composition, would rule on these issues.

Federal crackdown: Farm Bill revisions and appropriations amendments

This all may become moot in the next iteration of federal law. In 2025, both chambers of Congress introduced proposals to revise the definition of legal hemp to narrow or eliminate the perceived “loophole” created by the 2018 Farm Bill.

Most notably, in June, the House Appropriations Committee approved language in a FY2026 spending bill (<https://bit.ly/4WUEmL>) that would ban hemp products containing any “quantifiable amounts” of THC, or any other cannabinoid with effects similar to THC. This means virtually all hemp-based cannabinoid products on the market today could be banned at the federal level, since even non-intoxicating CBD products usually contain trace amounts of THC.

While the bill is unlikely to pass in its current form, it demonstrates the current Congress’ inclination to close the hemp loophole and limit the proliferation of intoxicating hemp-derived products.

The states step in: a patchwork of prohibition and regulation

In the absence of unified federal enforcement, states have taken divergent approaches in response to the proliferation of intoxicating hemp-derived products. At least 32 states have enacted some kind of regulations on intoxicating hemp

products, and a handful of other states have proposed regulations that are still making their way through the legislative process.

Some states, like Minnesota and Kentucky, have opted to regulate the sale of intoxicating hemp products. These jurisdictions typically impose dosage limits, restrict sales to adults over 21, and subject products to testing, labeling, and packaging requirements.

Other states, including California and Colorado (which have legalized recreational cannabis), have made intoxicating hemp products completely illegal (or at least heavily restricted). This last category includes Arkansas and Alabama, which recently passed laws totally prohibiting certain intoxicating hemp-derived products.

Texas has also recently taken steps to ban or heavily restrict intoxicating hemp-derived products. In May, the Texas Legislature passed Senate Bill 3 (<https://bit.ly/44dzhaB>), which would have banned all consumable hemp products containing any intoxicating cannabinoid. Governor Greg Abbott, however, vetoed the bill in June, citing concerns over enforcement complexity and the need for a more tailored regulatory approach. Instead, Governor Abbott called for a special legislative session in July to develop a regulatory model akin to the state’s alcohol system.

Looking ahead: Will federal law shut it down?

The trajectory of intoxicating hemp products will likely be determined by the final language of the FY2026 spending bill and the 2025 Farm Bill. If either includes a broader definition of “THC” or prohibits all intoxicating cannabinoids regardless of derivation, much of the existing hemp marketplace could be wiped out or forced into the regulatory fold of marijuana regimes.

No matter the immediate result, businesses in this space should prepare for rapid regulatory changes, evolving enforcement priorities, and the growing likelihood of a coordinated federal crackdown.

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