



# Explainer: Hemp Intoxicants, the Farm Bill, and Federal and State Action in 2025

## Executive Summary

Since passage of the 2018 Farm Bill, a wave of intoxicating products emerged on store shelves under names like delta-8, delta-10, and THCa flower, often marketed as "hemp" or "hemp-derived." These products exploit gaps in federal law, creating what the CDC has called a significant public health concern particularly among children and minors, with sharp increases in pediatric emergency room visits from accidental THC edible ingestion.

**The Core Problem:** Congress intended the Farm Bill to support agricultural hemp for "rope, not dope," industrial applications like textiles, construction materials, and wellness products. Instead, the Farm Bill's narrow definition of hemp as containing no more than 0.3% delta-9 THC by dry weight and allowing "derivatives of hemp" with few restrictions inadvertently created two major regulatory gaps that producers have exploited to create a gray market in marijuana and synthetic drugs sold outside state-licensed cannabis markets.

### The Two Regulatory Gaps:

- Synthetic THC production through chemical conversion of CBD into various intoxicating compounds
- THCa flower sales - marijuana sold as "hemp" by exploiting definitional uncertainty

**The Bipartisan Solution:** Congress is moving to close these regulatory gaps through hemp restrictions that would clarify any cannabis product containing quantifiable amounts of THC, regardless of source, as subject to the same federal controls as marijuana. This approach preserves state authority while ending the regulatory confusion that has hindered both public safety enforcement and legitimate industrial hemp development.

**Current Status:** The language has been incorporated into the based text of the 2025 Farm Bill and will soon be added to the House Agriculture Appropriations Bill, providing multiple pathways for enactment. Under this approach, much will be left to the rulemaking process, with FDA taking a leading role in determining quantifiable thresholds and regulating THC products. Meanwhile, over 40 states have recently adopted laws restricting, regulating, or prohibiting hemp intoxicants products.

# I. Background

## 1. What are "hemp intoxicants"?

Hemp intoxicants are psychoactive products derived from hemp, often sold as a substitute for marijuana and sometimes referred to as "gas station weed." Different state laws define these products using terms such as "adult-use hemp," "low THC hemp products," or "hemp-derived cannabinoids."

Hemp intoxicants fall into two distinct product categories, each exploiting a different legal regulatory gaps:

**Synthetic THC Products** These products contain chemically converted cannabinoids including delta-8 THC, delta-10, HHC, THCP and others. Producers chemically convert CBD (a non-intoxicating compound found in hemp) into various intoxicating analogs of THC, then incorporate them into gummies, beverages, or vapes.

***The regulatory confusion enabling synthetic THC:*** The 2018 Farm Bill removed hemp and products "derived" from hemp from federal controlled substances lists. Enterprising chemists interpreted this to mean that anything they could chemically produce from hemp would remain outside law enforcement authority. Since non-intoxicating CBD is easily converted into one or more forms of THC, this interpretation directly contradicts Congressional intent to support agricultural applications, not synthetic drug production, and it overlooks applicable federal law.

**THCa Flower Products** Also called craft hemp flower or adult-use hemp flower, these products are functionally identical to smokable marijuana but sold outside licensed marijuana programs. THCa converts to delta-9 THC when heated (smoked or vaped), making these products equivalent to traditional marijuana despite testing below 0.3% delta-9 THC in their raw form at an early stage of growth.. These products are sold loose by the gram or as pre-rolled joints.

***The regulatory confusion enabling THCa flower:*** Congress defined hemp as cannabis containing no more than 0.3% **delta-9 THC** by dry weight. This narrow definition ignores other forms of THC in the plant, particularly THCa (the precursor to delta-9 THC). While USDA established testing standards accounting for total THC content, these standards are widely disregarded by producers exploiting the gap in federal law.

## 2. The Public Safety Impact

The unregulated nature of these products has created significant public health concerns. Many hemp intoxicants are sold without meaningful regulatory oversight, including standards for testing, packaging, and age restrictions. Of particular concern is marketing to minors and in

states where access to legal marijuana is limited or prohibited and hemp intoxicants are presented as a “legal” alternative.

Another significant challenge, look-alike packaging, represents one of the most problematic trends: intoxicating hemp products designed to closely resemble well-known candy, cookie, and snack brands. These packages are often brightly colored, mimic popular trademarks, and are often indistinguishable from ordinary snack or candy products. The result is products that appear familiar and appealing, especially to young consumers, but may contain significant amounts of intoxicating THC compounds. These products are typically manufactured without permission from the original brands, raising public health concerns. They also frequently infringe on intellectual property rights.

### 3. Key Terminology

- **CBD (Cannabidiol):** Non-intoxicating cannabinoid found in hemp; the primary input for making synthetic THC through chemical conversion.
- **Conversion:** Chemical process that transforms non-intoxicating cannabinoids like CBD into psychoactive compounds such as delta-8 THC or HHC.
- **Common Synthetic THC Compounds:** Delta-8 THC, delta-10 THC, HHC, THCP — intoxicants chemically converted from CBD into analogs of THC. These can be more or less potent than delta-9 THC, the naturally occurring intoxicant in marijuana.
- **“Farm Bill Loophole”:** Regulatory gaps in the 2018 Farm Bill that allowed intoxicating cannabinoids to enter commerce outside intended agricultural applications.
- **"Farm Bill Compliant":** Industry term for products meeting the 0.3% delta-9 THC limit by weight. However, USDA requires total THC testing (not just delta-9 THC) for true compliance, and other federal laws still apply to these products.
- **Federal Analogue Act:** Federal law treating substances structurally similar to Schedule I drugs as controlled substances when intended for human consumption.
- **Miller Amendment:** Amendment introduced by Rep. Mary Miller to remove intoxicants from legal forms of hemp, later incorporated into base text of House farm bill and appropriations measures.
- **Synthetic THC:** Catch-all term for chemically altered or lab-made THC compounds, including delta-8, delta-10, HHC, and THC-O. Also termed "semi-synthetic THC" or "artificial THC."
- **THCa Flower:** Marijuana buds marketed as hemp by exploiting the fact that THCa (the primary cannabinoid in marijuana) converts to delta-9 THC only when heated. THCa flower is functionally indistinguishable from marijuana.
- **Total THC:** Laboratory testing method that reflects a product’s full intoxicating potential by accounting for both delta-9 THC and its precursor, THCa.

## II. Legislative Context: What are Congress and states trying to fix?

### 4. The State-Federal Partnership Crisis

The hemp intoxicants issue represents a textbook case of regulatory mismatch between federal definitions and state enforcement authorities. This disconnect has overwhelmed state-level efforts to regulate intoxicating hemp products and created an urgent need for federal clarification.

**State Response Evolution:** In 2023, only eight states had adopted regulatory frameworks addressing hemp-derived intoxicants, primarily in the form of limited bans or early-stage rules focused on delta-8 THC. Many states in 2023 still treated hemp products as equivalent to non-intoxicating CBD wellness goods.

By mid-2025, things changed dramatically. More than 40 states have enacted laws to restrict, ban, or regulate intoxicating hemp products. These new frameworks include revised statutory definitions, THC potency limits, minimum age requirements, and prohibitions on chemical conversion processes. States such as Alabama and Tennessee have moved from permissive policies to aggressive enforcement, including raids and cease-and-desist orders. This rapid policy shift reflects mounting public health concerns and coordinated efforts among regulators to address legal regulatory gaps.

**Why States Need Federal Help:** A bipartisan coalition of 21 state Attorneys General has formally requested Congressional action, citing federal legal ambiguity as a barrier to effective enforcement. When producers claim that their products are federally legal "hemp" while violating state marijuana laws, enforcement becomes challenging, particularly in cases involving interstate commerce and online retail.

### 5. Federal Legislative Response: Restoring Congressional Intent

**2018 Farm Bill Context:** When Congress passed the 2018 Farm Bill, members from both parties were assured it would support farmers cultivating industrial hemp, not legalize intoxicating products or synthetic drugs. The phrase "rope, not dope" was a common refrain among Agriculture Committee members, underscoring the bill's intended focus on textiles, construction materials, and other non-intoxicating uses.

**Unintended Consequences:** What Congress envisioned as a narrow agricultural reform instead opened the door to a multi-billion-dollar synthetic drug industry. As House Agriculture

Committee Chairman Glenn Thompson acknowledged: "This was never the intent of the farm bill, and we need to fix it."

**Current Congressional Response:** In response, Congress is advancing bipartisan legislation to eliminate the regulatory gaps exploited by intoxicant manufacturers. Proposed amendments in 2024 and 2025 would revise the definition of hemp to exclude any plant or product containing a quantifiable amount of any form of THC. This shift from a plant-based to a product-based definition ensures that all intoxicating cannabinoids are regulated identically, regardless of their source. The amendment also directs the Department of Health and Human Services (through FDA) to establish rulemaking procedures to define "quantifiable" THC thresholds for distinguishing intoxicating from non-intoxicating products.

## 6. Multiple Legislative Pathways: Ensuring Passage

**Primary Route — Farm Bill:** The proposed definition change has been incorporated into both the 2024 and 2025 versions of the Farm Bill, signaling strong support from House and Senate Agriculture Committees.

**Faster Route — Appropriations:** Similar language was also added to the House Agriculture Appropriations Bill. Given delays to the Farm Bill, appropriations may offer a faster and more politically feasible route to enact federal controls on intoxicating hemp products.

### Current Legislative Status:

- House Appropriations Committee: Expected to adopt hemp provisions in the full House appropriations bill.
- Next Step: House floor vote on the appropriations package; the hemp language would be enacted as part of the full bill unless specifically removed.
- Senate Consideration: Following House passage, the Senate will consider the appropriations bill, with final language negotiated during conference.

## III. Practical Effects: What happens if this language becomes law?

### 7. Clarifying Existing Law vs. Creating New Restrictions

**Current Legal Reality:** Despite industry claims, delta-8 THC and other synthetic THC compounds are already federally illegal under multiple existing statutes. The proposed hemp language does not establish new prohibitions; rather, it removes ambiguity that has enabled widespread non-compliance and regulatory evasion.

## **Existing Federal Prohibitions:**

- **Federal Analogue Act:** Substances structurally similar to Schedule I drugs and intended for human consumption are treated as Schedule I controlled substances. CBD-derived synthetic THC products fall squarely within this definition.
- **Food, Drug, and Cosmetic Act:** THC in food or beverages constitutes adulteration under federal law, making interstate sale unlawful without explicit FDA approval—which no THC products currently possess.
- **Pharmaceutical Classification:** Both THC and CBD are recognized pharmaceutical compounds by FDA. Their inclusion in non-approved consumer products violates the drug approval framework.

**What Federal Clarification Accomplishes:** The revised hemp definition shifts the legal standard from plant source to product content. If a product contains quantifiable THC and produces intoxicating effects, it is not considered hemp, regardless of whether it originated from hemp or marijuana. This clarification closes the interpretive gap that allowed manufacturers to claim "Farm Bill compliance" while distributing unlawful products.

**The Enforcement Bridge:** Regulatory agencies currently face difficulty prosecuting hemp intoxicants cases due to defendants invoking the Farm Bill as a shield. The revised definition would foreclose this defense, enabling enforcement of existing law without the need for new statutory regimes.

## **8. Preserving State Authority While Enhancing Enforcement**

**State Sovereignty Maintained:** The federal clarification does not preempt state authority. States retain full discretion to regulate, ban, or license intoxicating cannabinoid products under existing frameworks. The revised definition aligns federal enforcement with state policy choices.

**Enhanced State Enforcement Capability:** With clearer federal definitions, states gain essential tools to:

- Eliminating the "federal hemp" defense used by violators of state marijuana laws
- Regulate online and interstate commerce more effectively
- Providing clearer legal foundation for state enforcement
- Support tax collection and licensing compliance among legitimate operators

**Interstate Commerce Benefits:** States with legal cannabis markets will gain stronger protections against inflows of unregulated intoxicants marketed as hemp. The clarification eliminates a key regulatory gap that undermines licensed operators and state regulatory systems.

## 9. Federal Agency Implementation: Immediate and Long-term Effects

### Immediate Enforcement Changes:

- **DEA:** Gains clearer authority to treat all intoxicating THC products consistently under the Controlled Substances Act
- **FDA:** Strengthens ability to issue warning letters, take enforcement actions, and regulate THC as a drug product. FDA would more clearly have regulatory authority over THC.
- **Customs and Border Protection:** Gains stronger statutory footing to interdict synthetic THC inputs and finished products at ports of entry

**Rulemaking Phase:** FDA will develop regulations defining "quantifiable" thresholds for THC content, likely through notice-and-comment rulemaking. This process will establish:

- Testing standards for total THC content
- Labeling requirements for compliant non-intoxicating hemp products
- Safety requirements for legitimate industrial and wellness uses

**Enhanced Enforcement Tools:** Federal agencies will expand use of standards development, product seizure, import controls, and online enforcement. These federal actions will also empower states to conduct parallel enforcement with the benefit of regulatory clarity and federal backing.

## IV. Impact Analysis: Who benefits and why act now?

### 10. Public Health

- **Escalating Health Risks:** Public health evidence shows that intoxicating hemp products have created risks far beyond what Congress envisioned when enacting the 2018 Farm Bill. The CDC has reported significant increases in pediatric emergency room visits due to accidental ingestion of THC-infused edibles, many of which are labeled as "hemp," creating confusion among parents and caregivers about product safety.
- **State Emergency Responses:** States such as Oregon, New York, and Colorado have issued emergency health advisories and adopted emergency rules in response to the rapid proliferation of intoxicating hemp products.
- **Enforcement Crisis:** The request for Congressional action by a bipartisan coalition of 21 state Attorneys General underscores the national scope of the problem. These AGs report that federal ambiguity makes it exceedingly difficult to prosecute bad actors, particularly in cases involving interstate shipments and online sales, where jurisdictional lines are blurred and federal support is limited.
- **Pediatric Safety Focus:** Unlike adult-use marijuana programs that impose strict labeling, packaging, and testing standards, hemp intoxicants are often sold in packaging

that features cartoon characters, bright colors, and candy-like imagery. These marketing tactics directly appeal to children and create serious pediatric safety risks. Federal action is needed to close this regulatory gap.

## V. State Regulatory Response: How States Are Taking Action

### 11. The Regulatory Crisis States Are Facing

The proliferation of hemp intoxicants has created an unprecedented regulatory challenge for states. Unlike traditional marijuana, which states can regulate through established frameworks, hemp intoxicants exploit federal definitional gaps that undermine state enforcement authority. When producers claim their products are federally legal "hemp" while violating state marijuana laws, enforcement becomes nearly impossible—particularly for interstate commerce and online sales.

This regulatory crisis has forced states to develop innovative approaches to address products that fall into a legal gray area. The result is a patchwork of state responses that demonstrates both the urgency of the problem and the limitations of state-only solutions.

### 12. Rapid State Policy Evolution: From Permissive to Restrictive

**2023 Baseline:** At the beginning of 2023, only eight states had adopted comprehensive regulatory frameworks addressing hemp-derived intoxicants. Most states still treated all hemp products as equivalent to non-intoxicating CBD wellness goods, with minimal oversight or age restrictions.

**2025 Shift:** By mid-2025, more than 40 states have enacted laws to restrict, ban, or regulate intoxicating hemp products. This represents one of the fastest regulatory responses in recent state policy history, reflecting mounting public health concerns and coordinated efforts among policy makers and regulators to address dangerous products.

### 13. Three Primary State Approaches

States have adopted three distinct regulatory approaches to hemp intoxicants:

**Complete Prohibition (19 States + DC):** These jurisdictions have implemented either express or de facto bans on hemp intoxicants through various mechanisms:

- Alaska, Arizona, Arkansas, California, District of Columbia, Idaho, Illinois, Kansas, Massachusetts, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Vermont, Virginia, Washington, Wyoming



**Dispensary-Only Restriction (4 States):** Alaska, Arizona, DC, and Montana allow hemp intoxicants only through licensed marijuana dispensaries, effectively removing them from mainstream retail while maintaining access through regulated channels.

**Comprehensive Regulation (29 States):** These states have established regulatory systems that allow hemp intoxicants under strict controls that are comparable to marijuana regulations, including licensing, testing, potency limits, and age restrictions.

#### **14. The Synthetic Cannabinoid Response: 37 States Take Action**

Regardless of whether or not they allow hemp intoxicants, an overwhelming majority of states - 37 jurisdictions - have specifically banned synthetic or artificially converted cannabinoids, recognizing the fundamental distinction between naturally occurring compounds and laboratory-created drugs.

States banning synthetic cannabinoids include: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, DC, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

#### **15. Common Regulatory Controls in Regulating States**

States that allow hemp intoxicants under regulatory frameworks typically implement comprehensive controls that mirror marijuana regulations:

##### **Product Safety Requirements:**

- Mandatory third-party laboratory testing (41 states)
- Potency limits (typically 5-10mg THC per serving)
- Package limits (commonly 40-100mg total THC)
- Child-resistant packaging requirements
- Prohibited product forms (many ban smokable/inhalable products)

##### **Market Access Controls:**

- Licensing requirements for manufacturers, distributors, and retailers (40 states)
- Retail location restrictions (many prohibit gas station/convenience store sales)
- Age restrictions (21+ in most implementing states)
- Online sales limitations and local opt-out provisions
- Taxation ranging from 5-25%

##### **Enforcement Mechanisms:**

- Random inspections and compliance monitoring
- Product seizure authority

- Civil penalties and license revocation
- Criminal prosecution for violations
- Sting operations similar to alcohol enforcement

## 16. Why State-Only Solutions Are Insufficient

Despite aggressive state action, hemp intoxicants continue to pose enforcement challenges that require federal intervention:

**Interstate Commerce Problems:** Products banned in one state are easily shipped from permissive states, undermining local enforcement. Online retailers frequently ignore state shipping restrictions, creating a whack-a-mole enforcement problem.

**Legal Shield Defense:** Producers routinely claim "Farm Bill compliance" when prosecuted under state law, forcing expensive litigation and creating legal uncertainty that deters enforcement.

**Resource Limitations:** States lack the resources to monitor and prosecute the thousands of online retailers and out-of-state manufacturers distributing these products.

**Definitional Confusion:** Federal legal ambiguity makes it difficult for state regulators to distinguish between lawful hemp products and illegal intoxicants, particularly for borderline cases.

## 18. Bipartisan Coalition Requests Federal Action

The enforcement challenges have prompted an unprecedented request for Congressional intervention. A bipartisan coalition of 21 state Attorneys General from both Republican and Democratic states has formally asked Congress to close the federal regulatory gaps that enable hemp intoxicant proliferation.

This coalition represents states with diverse political perspectives and cannabis policies, demonstrating that the hemp intoxicants problem transcends partisan politics and affects all jurisdictions regardless of their approach to marijuana policy.

## 19. Pennsylvania's Opportunity for Leadership

Pennsylvania has the opportunity to join the growing number of states taking decisive action to protect public health while the federal government works to close regulatory gaps. The state response data shows that jurisdictions acting quickly and comprehensively are most successful at addressing these dangerous products before they become entrenched in local markets.

States that have implemented strong regulatory frameworks report better compliance, fewer public health incidents, and more effective enforcement outcomes compared to states that have delayed action or adopted partial measures.

## 20. Strengthening Legitimate Industrial Hemp

**Ending the Identity Crisis:** The rise of intoxicating hemp products has blurred the public and political understanding of industrial hemp. Organizations such as the National Hemp Association have emphasized the damage this confusion has caused, noting that hemp "still has somewhat of an identity crisis; often confused with marijuana," and that the expansion of synthetic intoxicants "hasn't helped matters."

**Economic Benefits for Agriculture:** Removing intoxicants from hemp policy discussions will:

- Eliminate regulatory confusion that has chilled agricultural investment and supply chain development
- Restore hemp's identity as a non-intoxicating industrial crop with applications in textiles, construction, and biocomposites
- Support clearer banking and insurance relationships for licensed hemp farmers and processors
- Improve domestic and export market access for lawful hemp-based goods

**Political Support Restoration:** The association of hemp with synthetic drug products has eroded bipartisan support for industrial hemp programs. Federal action to draw a clear boundary between intoxicants and hemp will restore confidence among lawmakers, regulators, and commercial stakeholders.

**Industry Consensus:** There is broad consensus within the legitimate hemp industry that intoxicating cannabinoids should be regulated separately from true industrial hemp. This separation enables appropriate regulation, protects public health, and supports economic development in both sectors.

## Key Takeaways

**The Problem:** The 2018 Farm Bill inadvertently created a regulatory gap that allows synthetic drugs and high-THC marijuana products to be marketed as "hemp." What Congress intended as agricultural policy ("rope, not dope") became the foundation for a multi-billion-dollar intoxicants industry that circumvents state marijuana laws and exposes children to serious health risks.

**The Solution:** Reframe the definition of hemp to be product-based rather than plant-based. If a product contains quantifiable THC and is intoxicating, it is not hemp—regardless of the plant source. This adjustment clarifies existing law without introducing new federal prohibitions.

## Why Support This Change?

### *Public Safety:*

- CDC reports significant increases in pediatric ER visits due to THC edibles labeled as "hemp"
- 21 state Attorneys General across party lines have requested Congressional intervention
- States are broadly implementing regulatory frameworks
- Products often use cartoon branding and candy-style packaging that targets children

### *Restores Congressional Intent:*

- Lawmakers were promised "rope, not dope" during 2018 Farm Bill deliberations
- The current market contradicts both the letter and spirit of that law
- This is a corrective measure that preserves intended agricultural benefits

### *Helps States Enforce Their Laws:*

- While over 40 states have enacted regulations, most struggle with enforcement
- Legal ambiguity allows violators to invoke "Farm Bill compliance" as a defense
- The change strengthens both prohibition states and those with regulated cannabis markets

### *Supports Legitimate Hemp Industry:*

- Industrial hemp stakeholders strongly favor separating hemp from intoxicants
- Removes regulatory confusion that deters agricultural investment
- Restores hemp's reputation as a lawful, non-intoxicating industrial crop

## Legislative Status — Multiple Paths to Victory

- *Farm Bill*: Revised definition included in both 2024 and 2025 versions
- *Appropriations*: Hemp language added to House Agriculture Appropriations Bill

**Bottom Line** This is a bipartisan fix to a serious unintended consequence that has created significant confusion and abuse at the state and federal levels. It restores Congressional intent, protects public health especially among children, supports legitimate agriculture, and empowers states to enforce their own laws.