WISCONSIN LEGISLATIVE COUNCIL *IssueBrief*

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Change to Federal Definition of "Hemp"

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Under current federal and state law, "hemp" is generally defined as the Cannabis plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration of up to 0.3 percent on a dry weight basis.[1] Since enactment of that definition in the federal 2018 Farm Bill and subsequently in 2019 Wisconsin Act 68,[2] "hemp" is exempt from federal and state controlled substances laws that otherwise prohibit manufacture, delivery, and possession of marijuana and THC.[3]

Recently, SEC. 781 of P.L. 119-37 modified the federal definition of "hemp" that was created in the 2018 Farm Bill to, in part, specify substances and products that are either expressly included in or excluded from that definition, and thus either exempt from or covered by federal controlled substances laws. However, such changes do not take effect until November 12, 2026. This issue brief describes the pending substantive changes to the federal definition of "hemp" and discusses the effect of those pending changes on the legality of hemp under Wisconsin law, as well as other practical effects.

FEDERAL "HEMP" DEFINITION, AS OF NOVEMBER 12, 2026

Very generally, effective November 12, 2026, P.L. 119-37 modifies the federal definition of "hemp" to (1) define hemp as having a total THC concentration of not more than 0.3 percent on a dry weight basis, rather than applying the 0.3 percent threshold only to delta-9-THC; (2) expressly include "industrial hemp";[4] and (3) expressly exclude certain hemp-derived cannabinoid (HDC) products.

With respect to the exclusion of HDC products from the definition of "hemp," P.L. 119-37 defines "HDC product" as any intermediate or final product derived from hemp, other than industrial hemp, that contains cannabinoids in any form and "is intended for human or animal use through any means of application or administration, such as inhalation, ingestion, or topical application." Intermediate and final HDC products are excluded from the definition of "hemp" if the HDC product contains cannabinoids that are not capable of being naturally produced in the cannabis plant or if the HDC product contains cannabinoids that are capable of being naturally produced by a cannabis plant but are synthesized or manufactured outside of the plant.

Intermediate and final HDC products may also be excluded from the definition of "hemp" based on the product's THC content. Specifically, intermediate HDC products that contain more than 0.3 percent combined total THC and final HDC products that contain greater than 0.4 milligrams of total THC per container are excluded. These thresholds incorporate tetrahydrocannabinolic acid (THCA) content,[5] as well as any other cannabinoids that have, or are marketed to have, similar effects on humans or animals as THC, as determined by the secretary of the U.S. Department of Health and Human Services.[6]

In short, P.L. 119-37 will narrow the federal definition of "hemp" by requiring all THCs, in the aggregate, to be at or under the 0.3 percent threshold, rather than only delta-9-THC, as provided under current law, and will further narrow the definition by excluding certain HDC products, including final HDC products that exceed 0.4 milligrams of total THC per container.[7]

EFFECT OF NEW FEDERAL "HEMP" DEFINITION ON WISCONSIN LAW

P.L. 119-37's change to the federal definition of "hemp" does not directly affect the legality of hemp under state law but may prompt uncertainty for stakeholders in certain contexts. With respect to controlled substances laws, P.L. 119-37 affects only the federal definition of "hemp" and not the state definition, which continues to focus solely on delta-9 THC concentration rather than on total THC, whether by concentration or by milligrams per container.[8]

Thus, under P.L. 119-37's narrowed definition, and absent any state law change, a particular plant or product may be lawful as "hemp" or as a "derivative, extract, or cannabinoid" of hemp under state law yet may not meet the federal definition of "hemp" and would therefore be unlawful under federal controlled substances laws. Under federalism principles, the federal government may preempt a state's laws and enforce the federal laws; in other words, legality under state law is not a defense to a violation of federal law. Thus, industry participation will depend on risk tolerance by stakeholders and the manner in which the enforcement of the federal controlled substances laws is prioritized.[9]

Hemp producers in Wisconsin are currently licensed by the federal U.S. Department of Agriculture (USDA), under a framework created in the 2018 Farm Bill and maintained by P.L. 119-37, and therefore subject to the federal laws governing the USDA's hemp production plan.[10] It seems hemp producers will be subject to the narrower federal "hemp" definition in order to obtain or maintain a USDA license, even if other plants would be legal under state law. Other industry participants downstream of growers may continue to assert that a particular hemp-derived product constitutes state-lawful "hemp," even though that product may be unlawful under federal law. Again, whether stakeholders do so depends on their risk tolerance as to potential enforcement of federal controlled substances laws.[11]

In closing, other consequences rooted in federal law may result from a more restrictive federal "hemp" definition that are likely to affect various industry practices, including banking and other financial services, tax planning, delivery of products via the U.S. Postal Service, and other activities that may be regulated by other federal agencies, including the FDA. These implications are specific to federal law and beyond the scope of this issue brief but may factor into an industry participant's overall risk analysis.[12]

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[1] 7 U.S.C. s. 16390; s. 94.55 (1), Stats.

[2] For more information on these enactments, see Legislative Council, *2018 Farm Bill Provisions Related to Hemp*, Issue Brief (Oct. 2019); and Legislative Council, 2019 Wisconsin Act 68, Act Memo.

[3] Effective April 28, 2026, the U.S. Department of Justice (DOJ) rescheduled marijuana from Schedule I to Schedule III, if the marijuana is contained in a drug product approved by the U.S. Food and Drug Administration (FDA) or if the marijuana is subject to a state-issued license under a state medical marijuana program. Per its terms, the final order "does not affect the status of hemp (as defined in 7 U.S.C. 16390), because hemp is excluded from the definition of marijuana."

[4] P.L. 119-37 defines "industrial hemp" as hemp that is grown for use of specific non-cannabinoid portions of the plant and other specific uses or purposes. The full definition of "industrial hemp" will be codified at 7 U.S.C. s. 16390 (2), upon taking effect.

[5] Very generally, THCA is a precursor to THC found in raw, unheated cannabis plants that may be converted into THC through a process called decarboxylation. Under P.L. 119-37, THCA content is relevant to a plant or product's total THC concentration.

[6] The revised federal definition of "hemp" also excludes any viable seeds from a Cannabis sativa L. plant that exceeds a total THC concentration, including THCA, of 0.3 percent in the plant on a dry weight basis.

[7] P.L. 119-37 requires the FDA, in consultation with other relevant federal agencies, to publish all of the following: a list of all cannabinoids known to the FDA to be capable of being naturally produced by a Cannabis plant, as reflected in peer-reviewed literature; a list of all THC class cannabinoids known to the FDA to be naturally occurring in the plant; a list of all other known cannabinoids with similar effects to, or marketed to have similar effects to, THC class cannabinoids; and additional information and specificity about the term "container," as relevant to the total THC limit per container for final HDC products.

[8] While the state "hemp" definition responds to federal law, it does so only if the federal percentage is more permissive, not less. Thus, the state's "hemp" definition does not automatically change with a change to the federal definition. However, state law requires the Controlled Substances Board (CSB) to "similarly treat" in the state's controlled substance laws any substance that is designated, rescheduled, or deleted as a controlled substance under federal law upon receiving notice of such federal actions, unless an objection is filed. [s. 961.11 (4), Stats.] Because P.L. 119-37 modifies only the definition of "hemp" under 7 U.S.C. s. 16390, and does not amend the schedules in 21 U.S.C. s. 812, it seems that P.L. 119-37 does not constitute a rescheduling but rather a change to an existing definition in an agricultural law that is cross-referenced in the federal controlled substance law. Ultimately, whether the CSB acts in this manner will depend on whether it receives notice that a substance has been designated, rescheduled, or deleted as a controlled substance under federal law.

[9] Issues relating to potential enforcement of the revised federal "hemp" definition are discussed in Zachary T. Neuhofer, Lisa N. Sacco, Hassan Z. Sheikh, Cong. Rsch. Serv., IN21620, *Change to Federal Definition of Hemp and Implications for Federal Enforcement* (2025), and Joanna R. Lampe, Cong. Rsch. Serv., LSB11381, *Changes to the Federal Definition of Hemp: Legal Considerations Under the Controlled Substances Act* (2025).

[10] 7 C.F.R. s. 990.20. The Wisconsin Department of Agriculture, Trade and Consumer Protection previously administered a state hemp program under a pilot program authorized by the 2014 Farm Bill, but under the 2018 Farm Bill's framework, Wisconsin hemp growers are licensed by the USDA, as of January 1, 2022.

[11] State law contains other regulatory provisions relating to hemp that are beyond the scope of this issue brief. Briefly, the effect of those regulatory provisions is unclear when analyzed under a modified, more restrictive federal "hemp" definition and in the absence of any state-run hemp program, and therefore will remain part of the risk analysis undertaken by industry participants.

[12] For more information from a federal perspective, see Zachary T. Neuhofer, Cong. Rsch. Serv., IF13136, *Changes to the Statutory Definition of Hemp and Issues for Congress* (2025).