

Price To Resolve US Hemp Dilemma Too High In House Appropriators' FY 2026 FDA Spending Bill

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Provisions in bill approved by Agriculture, Rural Development, FDA and Related Agencies Subcommittee aren't likely to pass largely because they set a price too high for delta-8 THC and other ingredients to meet the definition of hemp as a de-scheduled substance.

Language in a House Appropriation subcommittee's fiscal year 2026 spending bill isn't likely to pay the fare for establishing lawful use of hemp ingredients in products other than drugs subject to Food and Drug Administration regulation.

Key Takeaways

- Appropriations subcommittee's bill extends 0.3% limit from delta-9 to include all THC derivatives but also sets essentially a zero-tolerance bar by excluding "any hemp-derived cannabidiol products" which contain "quantifiable amounts based on substance, form, manufacture, or article" of THC
- "It faces a steeper climb with the full committee," says Jonathan Miller, USHR general counsel.
- "Delta-8 is discussed as the target, but the language in there would seemingly target all quantifiable amounts of THC. I think all intoxicating cannabinoid stakeholders should be paying close attention," says attorney Jonathan Havens.

The provisions [in the bill](#) approved on 5 June by the Agriculture, Rural Development, FDA and Related Agencies Subcommittee aren't likely to pass largely because they set a price too high for delta-8 tetrahydrocannabinol and other ingredients to meet the definition of hemp as a de-scheduled substance and not instead be deemed cannabis under federal controlled substance regulations.

The subcommittee's bill to amend 7 USC Chapter 38 Subchapter VII [Sec. 1369o](#) [Hemp Production/Definitions], which passed on 9-7 party-line vote, also will face a higher price for passage on 10 June when its considered by the full committee, where members are likely to reject the subcommittee's extreme tightening of whether cannabidiol and other ingredients qualify as hemp.

“It passed today, but it faces a steeper climb with the full committee,” said Jonathan Miller, general counsel for the US Hemp Roundtable industry group.

“That being said, we’re taking it very seriously. We’re using this as an opportunity to mobilize and educate the public,” Miller said.

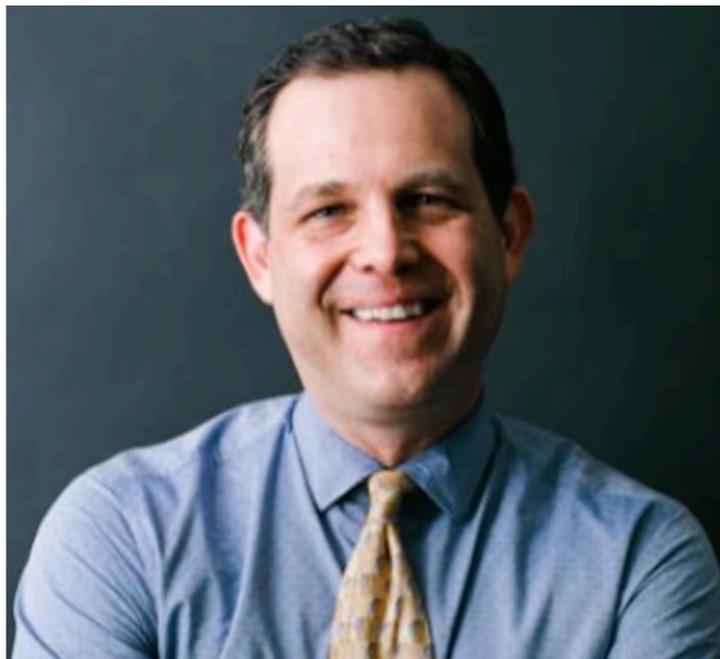
Language Tracks With 2024 Appropriation, Agriculture Bills

This isn’t the first price tag for the hemp regulation language in the FDA spending legislation. Similar restrictions, introduced by Illinois Republican Mary Miller, were included in the [Appropriation subcommittee’s FY2025 bill](#) for the agency and in the House Agriculture Committee’s [2024 bill to reauthorize spending](#) for Department of Agriculture programs.

“It’s the same idea of redefining hemp and banning most hemp products, any products that have any THC,” said Miller, who also is a partner at Frost Brown Todd LLP in Washington.

“It’s not an anything that would maintain a viable hemp industry. This would eliminate every product that has any quantifiable THC, which is pretty much every single product, including most non-intoxicating CBD products.”

Attorney Jonathan Havens, who counsels clients on regulation, compliance and enforcement of hemp, marijuana and other consumer products, also noted the language largely mirrors provisions in the previous House bills and pointed out that it leaves some loose ends in defining how hemp ingredients qualify as lawful.



Jonathan Miller: “This would eliminate every product that has any quantifiable THC, which is pretty much every

single product, including most non-intoxicating CBD products.” (Source: US Hemp Roundtable)

“It is not carefully drafted. There are some things about it that will need to be figured out,” said Havens, a partner at Saul Ewing LLP in Baltimore.

“One of the things that concerns me is delta-8 is discussed as the target, but the legislation, the language in there would seemingly target all quantifiable amounts of THC. I think all intoxicating cannabinoid stakeholders should be paying close attention,” he added.

Hemp De-scheduled With Limit Only For Delta-9 THC

A provision in the 2018 farm bill de-scheduled hemp as a controlled substance, defining it as any part of the cannabis plant containing no more than 0.3% concentration of delta-9 THC by dry weight.

The farm bill, which also maintained the FDA’s authority over the use of hemp ingredients in products subject to its regulatory oversight, was written with the presumption that delta-9 THC was the only derivative from cannabis with intoxicating or psychoactive characteristics. However, the market rapidly evolved on sales of products containing delta-8 THC and other derivatives besides delta-9 which also have been identified as having those qualities.

The US Cannabis Council [made its concerns](#) known about delta-8 THC and similar derivatives in April 2024. The council asked the ranking members of the House and Senate Agriculture Committees to use reauthorization of the farm bill “to tackle the national crisis caused by unregulated intoxicating hemp products” by limiting the variety of hemp derivatives which qualify as de-scheduled.

Moreover, [experts agree](#) that production of commercial supplies can’t be supported by amounts of delta-8 and other derivatives potentially made from plants; instead, synthetic sources are supporting the current market for those ingredients.

The Appropriations subcommittee’s bill extends the 0.3% limit from delta-9 to include all THC derivatives but also sets essentially a zero-tolerance bar.



Jonathan Havens: "It's poorly drafted, because it's not very clear how you can say 0.3% and then you can say any quantifiable amount, because quantifiable amount is less than 0.3% potentially." (Source: Saul Ewing)

"It would go to point 3% to zero," Miller said in an interview.

The provision excludes "any hemp-derived cannabidiol products" which contains "quantifiable amounts based on substance, form, manufacture, or article" of tetrahydrocannabinol (including tetrahydrocannabinolic acid)" as determined by the Health and Human Services Department "in consultation with" the USDA; or "any other cannabinoids that have similar effects (or are marketed to have similar effects) on humans or animals as tetrahydrocannabinol."

The bill also includes language to prohibit synthetically sourcing any ingredient intended for use as hemp.

It excludes "cannabinoids that are not capable of being naturally produced" from a cannabis plant as well as those which can be produced from cannabis but "were synthesized or manufactured outside the plant."

"It's poorly drafted, because it's not very clear how you can say 0.3% and then you can say any quantifiable amount, because quantifiable amount is less than 0.3% potentially, depending on whatever HHS and USDA say," Havens noted.

"If you're saying that it's going to potentially ban or carve out from the farm bill, any finished product with a viable amount of THC, I don't know, A, how you square that with the 0.3% or less, but B, more importantly, that's potentially like a full spectrum product with any amount of THC, even if it's low level," he added.

Bills Expected Soon From Different Starting Points

The USHR asserts that amending the 2018 farm bill provision or otherwise changing the 0.3% delta-9 THC limit as the only definition for de-scheduled hemp isn't needed to ensure the safety and limit the accessibility of hemp-containing products.

Miller has confidence that the potentially market-killing provision in the Appropriation subcommittee's bill won't become law. Broader legislation about hemp standards and production and marketing of the products, either as a standalone bill or included in a bill also addressing other USDA or FDA issues, is a more likely vehicle changing the market.

"The right approach is submitting a bill through Congress that would go through either the House Energy and Commerce Committee or the Senate Health Committee," he said.

The USHR expects Sen. Ron Wyden, D-OR, and Rep. Morgan Griffith, R-VA, to soon introduce bills providing more workable solutions.

"These will be full regulatory bills. These will be bills that will ensure that hemp products are manufactured safely, that they're transparently labeled, that they have packaging that is not confusing, such as imitating other brands, and that they're kept far out of the hands of children," Miller said.

[The FDA in 2019](#) deemed hemp-derived ingredients unlawful for use in food and supplements because hemp, along with cannabis, had been studied or approved for use as a drug in the US. It said then it would consider conducting a rulemaking for lawful use of hemp in food and supplements while allowing sales to continue of hemp-containing food and supplements which were compliant with other relevant regulations.

Although [the FDA in 2023](#) opted to ask Congress for help, the USHR is among the industry stakeholders contending that the agency's existing authorities support determining whether hemp ingredients can be used in non-drug products subject to its regulation.

"We believe FDA has the authority to regulate hemp. They don't. So, we need to get Congress to explicitly authorize them to start regulating our product," Miller said.

With Health and Human Services Secretary Robert F. Kennedy imposing his influence across life sciences and health and wellness policies, chances for resolving the hemp gridlock may have improved.

"We're hopeful. Secretary Kennedy talks all about natural products," Miller said. "We think his Make America Healthy Again initiative would fit in quite nicely with what we're doing."

Another reason for doubting the chances for the current hemp regulatory language in the Appropriation subcommittee's bill is that, based on recent congressional history, the entire

appropriation for federal agencies under the committee's oversight probably won't pass, with or without the subcommittee's hemp regulation language.

For numerous sessions Congress hasn't passed spending bills through regular appropriations; it's agreed to one or more continuing resolutions at existing funding levels to start each new fiscal year before eventually approving omnibus bills for agencies across the federal government other than the Department of Defense.

"The important thing to note is that it's been years since one of these spending bills has passed all the way through Congress. This is quite controversial, quite partisan, and Republicans just don't have the kind of margins to pass bills like this, so I don't see this going anywhere," Miller added.