

# CBD – New Gold Rush or Regulatory Minefield?

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With passage of the Agricultural Improvement Act of 2018, PL 115-334 (the “Farm Bill”), many are eager to capitalize upon the popularity of hemp-based CBD.

This summary provides a broad overview of the Farm Bill.

## Terminology

At the outset, it is helpful to discuss the basic terminology associated with hemp-based products.

- **Hemp:** the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. **Short hand:** Hemp is cannabis with less than 0.3% THC.
- **Cannabinoid (“CBD”):** one of the many compounds found in cannabis. **Short hand:** Does not make users feel “high” or “stoned.” Purported benefits include relief from pain and anxiety. (Be mindful about medical or therapeutic claims, however!)
- **Tetrahydrocannabinol (“THC”):** compound that is the main physiologically active ingredient of cannabis. **Short hand:** The compound in cannabis that makes users feel “high” or “stoned.”

## Basics of the Farm Bill

The following is a brief summary of the Farm Bill’s relevant provisions:

- Discusses the production of hemp.
- Removes hemp from the definition of “marihuana” in the Controlled Substances Act, 21 USC § 801 et seq. (the “CSA”). This means that hemp is no longer a Schedule I controlled substance under the CSA.
- Hemp is federally legal if (1) grown by a licensed producer; (2) compliant with state or tribal laws, if any; and (3) compliant with the Farm Bill and its associated regulations.



- State and tribal governments have primary regulatory authority over hemp production, if they so choose. States/tribes choosing to regulate hemp production must submit a plan to the United States Department of Agriculture (“Dept of Ag”), which has sixty (60) days to approve or disapprove of the plan.
- Calls for the Dept of Ag to promulgate implementing regulations, and to draft a plan. The Dept of Ag plan will apply in those states/tribal jurisdictions in which there is no plan.
- No effect on state-legalized marijuana programs, whether medical or recreational.
- The United States Food and Drug Administration (the “FDA”) has jurisdiction over hemp and hemp-based products under the Food, Drug, and Cosmetics Act.
- In a December 20, 2018 statement, the FDA made clear that (1) it treats cannabis products like all other FDA-regulated products; (2) any product making a therapeutic claim must obtain FDA approval before introduction into interstate commerce; (3) any product intended for use in the diagnosis, cure, mitigation treatment or prevent of diseases will require FDA approval before it is marketed in the United States; (4) foods and beverages containing CBD or THC introduced into interstate commerce are illegal; and (5) marketing CBD or THC as a dietary supplement is illegal.

<https://www.fda.gov/newsevents/newsroom/pressAnnouncements/ucm628988.htm>

Good luck!

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**This is a broad summary of a complex topic, and does not constitute legal advice.**

