

In 2018, Congress passed H.R. 2, most commonly referred to as the "Farm Bill," to reauthorize federal farm, nutrition assistance, rural development and other agricultural programs through Fiscal Year 2023. One notable aspect of the legislation, section 12619, removes hemp as a Schedule 1 drug under the Controlled Substances Act, subsequently legalizing its growth.

## With Hemp Legalization, What Does This Mean for US Investors, Consumers and Manufacturers?

The 2014 Farm Bill authorized limited industrial hemp production for research projects approved and overseen by state and tribal governments. The 2018 Farm Bill took further action by removing hemp's designation as a Schedule I drug. Specifically, the bill defines hemp as "the plant *Cannabis sativa* 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 (THC) of not more than 0.3 percent on a dry weight basis." Traditional marijuana which is made from a different variety of the cannabis plant with THC over that threshold remains a Schedule 1 drug and illegal on the federal level.

Unlike previous legislation authorizing pilot programs to study industrial hemp, the 2018 Farm Bill allows hemp cultivation more broadly – creating opportunities to transfer hemp-derived products across state lines for commercial or other purposes and placing no restrictions on the sale, transport or possession of hemp-derived products. Further protection for hemp farmers is included in section 11101, which provides Federal Crop Insurance. Thus, hemp farmers, in many ways, are treated the same other commodity farmers.

## Hemp Restrictions

While legal, growing and commercializing hemp comes with many restrictions. First, governmental entities seeking approval from the US Department of Agriculture (USDA) would need to demonstrate a hemp THC level-testing procedure, as well as processes for the disposal of plants or products with THC concentration above 0.3%. Pursuant to Section 10113 of the Farm Bill, state departments of agriculture must still take steps to allow for hemp cultivation, which includes consultation with the state's governor; submission of a hemp regulatory program to the Secretary of USDA; and a process to license and regulate hemp upon approval by the Secretary.

States, such as Washington and Colorado, previously legalized industrial hemp growing, but must also follow the processes set forth in the Farm Bill to ensure compliance with federal law. Persons living in states that do not create a hemp regulatory program have the option to apply for licenses and adhere to a federally run program. So, while the Farm Bill legalizes hemp, it does not create a system free from restrictions.

## Open for Investment

The hemp-derived CBD market is expected to grow by more than 100% a year, and *Fortune* magazine reported that investment in hemp and marijuana grew from US\$3.5 billion in 2017 to US\$13.8 billion in 2018, despite both plants being Schedule 1 drugs at the federal level. That investment is expected to increase following the legalization of hemp.

## State-Legal Cannabis Programs

The Farm Bill has no effect on state-legal cannabis programs, which remain illegal under federal law. While many suggest Farm Bill efforts indicate a shift toward legalizing cannabis on the federal level, it is clear that the Farm Bill does not legalize cannabis. However, legislation introduced in the 115th Congress by Senators Cory Gardner (R-CO) and Elizabeth Warren (D-MA) titled, Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, S. 3032, would recognize legalization of cannabis and the US state laws that have legalized it. A companion bill was introduced, also in the 115th Congress, by Representatives Bulmenauer (D-OR) and Joyce (R-OH).

## Contacts

### Thomas B. Reems

Partner, Denver  
T +1 303 894 6110  
E [thomas.reems@squirepb.com](mailto:thomas.reems@squirepb.com)

### Austin M. Harrison

Associate, Washington  
T +1 202 457 6331  
E [austin.harrison@squirepb.com](mailto:austin.harrison@squirepb.com)