

Business Considerations Amid Hemp Product Policy Change

By **Jesse Alderman, Michael McQueeney and Stephen Bartlett** (January 12, 2026)

In passing the Agriculture, Rural Development, Food and Drug Administration, and Related Agency Act,[1] Congress closed the hemp loophole effective Nov. 12, 2026, sending shock waves through the estimated \$30 billion national consumable hemp product market.

Absent additional congressional action on intoxicating hemp products, a highly relevant topic given President Donald Trump's Dec. 18, 2025, Executive Order No. 14370 and its focus on hemp-derived CBD, intoxicating hemp products are on the clock.[2]

Indeed, in less than one year, all consumable hemp products with more than 0.4 milligrams of total THC per container are poised to be reclassified as marijuana, and thus subject to the Controlled Substances Act, or CSA.[3]

This article focuses on practical and business considerations over the next year for brands, manufacturers, distributors, retailers, lenders, investors, vendors and service providers, emphasizing operational strategies, evaluating contract and counterparty risk, restructuring and dissolution options, tax implications, intellectual property protections, state trigger laws, and a broader legislative outlook.

What Congress Did and What It Means in Practice

The bill fundamentally narrowed the federal definition of "hemp" — an exception from the federal definition of "marijuana" — by modifying the delta-9 THC dry-weight measurement standard to a total THC dry-weight measurement standard and by establishing total THC concentration caps for intermediate and final hemp product forms.

Regarding final hemp products, the bill imposes a 0.4 mg total THC limit per container for products intended for human consumption. This new law also essentially prohibits hemp products containing cannabinoids that are not capable of being naturally produced by the cannabis plant and those that are synthesized or manufactured outside the plant — even if the cannabinoid is naturally occurring in cannabis.

In short, 365 days following enactment of the bill, affected products — and most of the intoxicating hemp products in the current marketplace — will be treated as marijuana under the CSA.

Until Nov. 12, 2026, products that are compliant with the 2018 Farm Bill's delta-9 THC standard remain federally lawful, though maintaining compliance with state hemp laws remains critical and increasingly complex given the ever-increasing number of states seeking to regulate these products, as well as the growing wave of states aiming to revise existing regulations to conform to the new federal regime.[4]



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What The Hemp Product Supply Chain and Service Providers Should Do in Next 11 Months

Over the next year, businesses should revise their long-term market strategies in case Congress does not reverse course or extend the one-year transition period. These strategic discussions might include:

- Assessing changes in ongoing state and federal laws to determine what compliant operations look like over the next 11 months;
- Pivoting product portfolios and supply chains to compliant, nonintoxicating categories and/or state-legal cannabis markets; and
- Planning for an orderly wind-down toward a strategic exit.

These paths require intimate understanding of the evolving body of federal and state rules applying to intoxicating hemp products. Businesses should monitor forthcoming rules and guidance documents from the U.S. Food and Drug Administration; track state legislation, emergency rules, final rules and state attorney general opinions; and follow litigation that may accelerate or reshape state compliance obligations.

Importantly, states are not standing still. For example, Massachusetts has recently introduced a hemp beverage bill that would impose age-gating rules, potency caps, licensing requirements, testing requirements and an excise tax.[5]

Texas has transitioned from emergency rules to a proposed permanent regulatory framework for intoxicating hemp products mandating sales to people 21 and older, rigorous age verification, and a graduated penalty system for violations.[6]

Ohio recently passed a law that restricts the sale of most intoxicating hemp products to licensed cannabis dispensaries only.[7]

New Jersey similarly appears poised — with a bill passing both the Senate and Assembly and awaiting the governor's signature — to revise various aspects of its intoxicating hemp law that was previously sidelined by an injunction.[8]

In other words, states are continuing to regulate aggressively and have not been placated by the looming federal ban. Critical evaluation of the changing state regulatory landscape is as important as ever.

Companies should also be aware of existing state trigger laws tied to federal action on intoxicating hemp products. Alabama, as one example, provides that any post-July 1, 2025, federal law changes that conflict with Alabama's intoxicating hemp framework will supersede conflicting state provisions.[9]

Arkansas similarly ties significant regulatory changes to specified federal actions, including amended definitions of hemp that exclude intoxicating cannabinoids or disallow intoxicating hemp products.[10]

These state trigger laws may change compliance obligations before the one-year federal transition period ends.

Contracts, Debt and Counterparty Risk

The possibility of intoxicating hemp products soon becoming illegal should inform a close review of existing contracts and covenants contained therein. For example, typical loan agreements requiring borrowers to operate in accordance with all laws may identify instances of material adverse events, treat violations as events of default, and trigger acceleration of loan repayment upon breach.

As an example, for five-year promissory notes — and similar debt instruments with longer-term repayment horizons — that finance companies and product lines that may become unlawful in 11 months, the bill poses a material risk for both debtors and creditors.

Vendor, joint venture and distribution contracts often contain similar "compliance with law" covenants in combination with material adverse change and change-in-law provisions. Force majeure and impossibility defenses may not prove effective when illegality is prospective and legislated.

A focused review of existing contracts and prioritized outreach to contractual counterparties now can buy time and flexibility.

If You Will Need Federal Bankruptcy Protections, File Early

If intoxicating hemp products become illegal on Nov. 12, 2026, it is important to note that federal bankruptcy courts and trustees generally cannot administer or sell assets that would violate federal law, and the U.S. Department of Justice has repeatedly emphasized that federal bankruptcy courts may not be used to rehabilitate marijuana businesses or to fund plans with illegal proceeds.[11]

Because even accelerated corporate bankruptcy cases can take a year from petition to plan approval, timing is critical: intoxicating hemp companies anticipating future insolvency issues should consider filing early enough to complete a lawful restructuring or liquidation before the ban's effective date.

Federal bankruptcy offers unique advantages and debtor protections as compared with receiverships, assignments for the benefit of creditors, and out-of-court workouts, including the following:

- The automatic stay halts collection and litigation nationwide, consolidating multi-jurisdictional exposure into one forum;
- Cash collateral authority and debtor-in-possession financing enable stabilized operations, payroll, supply chain continuity, and sale processes through super-priority claims and, where appropriate, priming liens;
- Allowing assumption, assignment or rejection of executory contracts and leases, often despite antiassignment clauses, thereby preserving or transferring value from critical agreements;
- Allowing sales free and clear of liens and certain interests, combined with transparent court-approved auctions, can maximize proceeds and minimize successor-liability risk; and

- The claims process and avoidance powers in federal bankruptcy can reclaim preferential transfers and promote equal treatment among creditors.

Importantly, federal bankruptcy courts require that petitions be filed in good faith, which requirement could become relevant in cases involving hemp product companies, whose products may soon become controlled substances.[12]

Bankruptcy courts assess good faith based on the totality of the circumstances, and the DOJ's public guidance underscores the limits on using federal bankruptcy to facilitate controlled-substance activity. Filing early could, in some cases, mitigate the risk that a petition is determined to have been filed in bad faith.

Section 280E: The Tax Elephant in the Room

If intoxicating hemp products become marijuana under federal law, Internal Revenue Code Section 280E may apply — that is, if marijuana is not ultimately rescheduled to Schedule III.[13]

280E disallows deductions and credits for businesses trafficking in Schedule I or II controlled substances. The question for hemp businesses is whether, when and to which tax years 280E might apply to revenues derived from sales of intoxicating hemp products.

Companies should consult their tax advisers to model cash tax impacts, earnings before interest, taxes, depreciation and amortization sensitivities, and covenant headroom across recent tax years, and consider entity-level restructuring and reasonable basis positions where appropriate, acknowledging that positions on whether 280E does or does not apply may continue to evolve with federal developments, including renewed momentum toward rescheduling marijuana to Schedule III.

Intellectual Property: Federal Trademarks at Risk, State Rights Ascendant

Federal trademark protections depend on lawful use of the trademark in commerce.[14]

If the underlying goods become unlawful at the federal level, existing trademark registrations may face cancellation or nonrenewal and pending or new applications covering such goods may be refused by the U.S. Patent and Trademark Office regardless of continued state legality.

Companies should immediately inventory their portfolios to identify marks tied to potentially illegal products, evaluate coverage for compliant products, and bolster state registrations and common-law protections as contingencies.

Monitoring USPTO guidance in light of the federal changes will be important, but trademark protection planning should not wait until intoxicating hemp products become illegal in November 2026.

Interstate Commerce and State Cannabis Analogies: Proceed With Care

States may attempt to fold regulation of intoxicating hemp products into existing cannabis regulatory structures.

For instance, Minnesota's regulation of lower-potency hemp edibles[15] and licensing[16] of entities within the lower-potency hemp edibles supply chain may provide a common-sense

framework for conflating the regulation of cannabis and intoxicating hemp products.

But, even if states create regulated channels for intoxicating hemp products in intrastate markets, federal illegality would foreclose interstate commerce in those finished goods — and component materials — and could complicate access to financial services and insurance markets.

The federal government's long-standing policy of noninterference in state-legal cannabis markets has never endorsed interstate commerce in cannabis, and entities engaging in interstate commerce of cannabis remain subject to criminal prosecution under federal law.

If and when intoxicating hemp products become reclassified as cannabis/marijuana, the same federal enforcement risk will apply to interstate commerce involving those products.

The Politics: Is There a Legislative Off-Ramp?

A legislative recalibration remains possible during the 365-day transition period, but the question is how likely?

Bills under consideration, such as the Cannabinoid Safety and Regulation Act introduced in the Senate on Dec. 10, 2025, include proposals to legalize and regulate certain intoxicating hemp products under the FDA's jurisdiction and impose national packaging, labeling, testing, potency cap and over-the-age-of 21 age-gating rules.[17]

Other bills, including those that would reserve the power to states to legalize and regulate intrastate intoxicating hemp product markets, are expected to be filed in 2026.

Trump's Dec. 18 executive order, which garnered headlines focused on the marijuana rescheduling process, nevertheless spent significant time discussing the benefits of hemp-derived CBD and directing engagement between the executive branch with Congress "to update the statutory definition of final hemp-derived cannabinoid product."

However, there is no guarantee that a fractured Congress will reverse course and offer salvation to an industry that it just voted to dismantle.

A Practical Playbook for the Year Ahead

2026 is about proactive positioning for the intoxicating hemp industry — legally, financially, operationally and reputationally — to preserve value and, where feasible, reshape existing business models in anticipation of looming federal changes. So, what should businesses in the intoxicating hemp industry be doing now?

Monitor state and federal regulatory changes.

Track the FDA's 90-day lists and guidance, and monitor state legislation and emergency rules and litigation that could accelerate obligations or alter risk profiles.

Conduct a contract and capital review.

Map illegality, compliance-with-law, material adverse events, and change-in-law provisions across loans, leases, supply, tolling and distribution agreements. Prioritize lenders and key vendors for early outreach. Revisit collateral, receivables risk and inventory strategies. Update investor disclosures to reflect transition period and anticipated business risk

changes.

Evaluate restructuring options now.

If federal bankruptcy is appealing, time is of the essence. Assess cases that meet good faith requirements and evaluate whether proceeds from prospectively illegal products might invalidate a petition.

Model tax and IP contingencies.

Assess potential 280E exposure across tax years, evaluate the effect of changes to business structures and operations, and solidify trademark portfolios where federal coverage may lapse by leveraging state registrations and common-law protections.

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