

# The Buzz on THC-Infused Beverages (and more): *Legal and regulatory perspectives*

**Moderator:**

John Cullerton, Former Senate President, Illinois

**Speakers:**

Gillian Schauer, PhD, MPH, Executive Director, Cannabis Regulators Association (CANNRA)

Neil Willner, Counsel, Vicente, LLP

# Disclosures

## **For Dr. Schauer:**

I do not have any external funding sources to disclose. Neither CANNRA nor I take funding from any commercial industry (e.g., pharmaceutical, alcohol, tobacco, or cannabis). My comments today do not represent an official position of CANNRA or of any of our individual member states or territories.

## **For Neil Willner:**

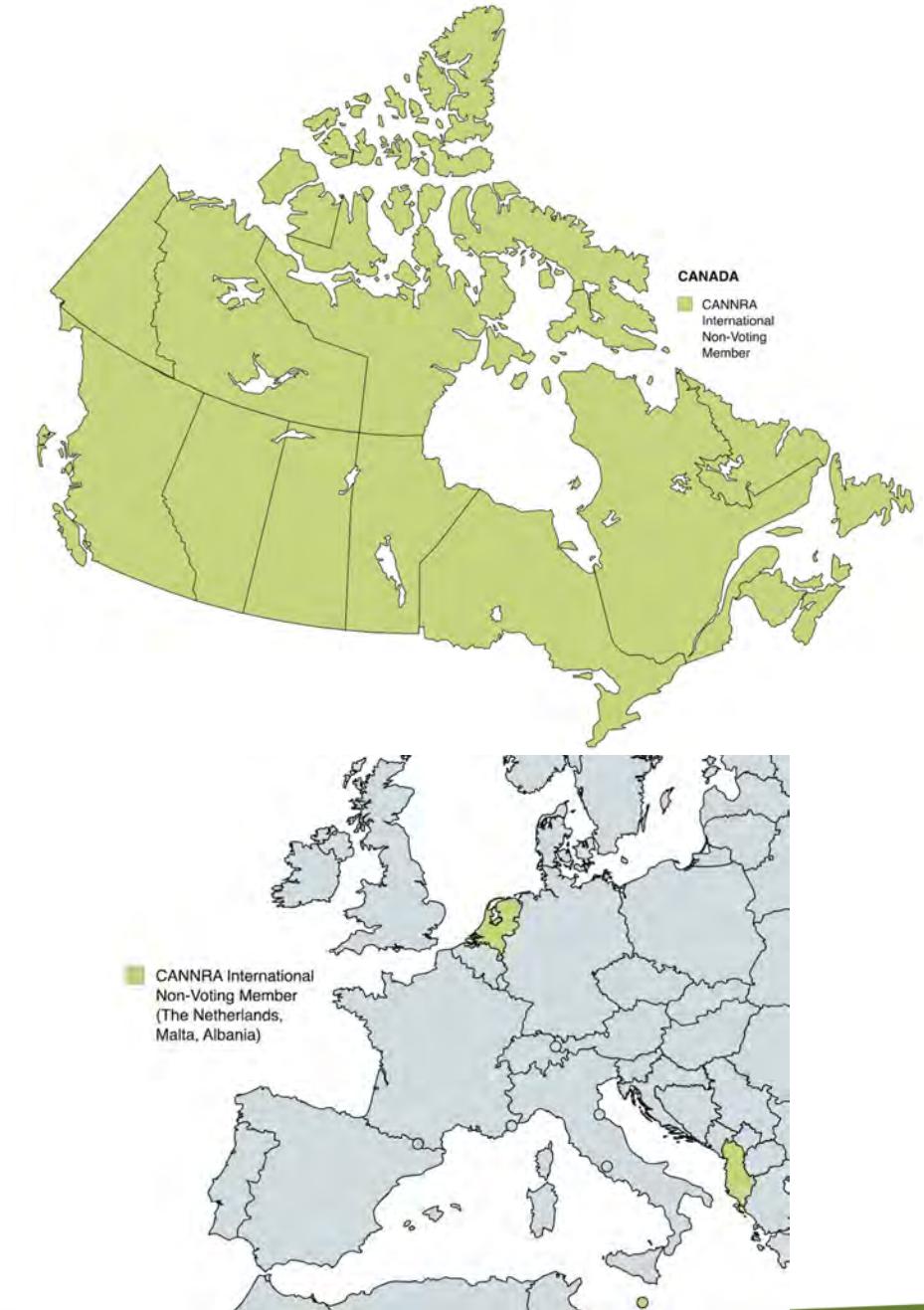
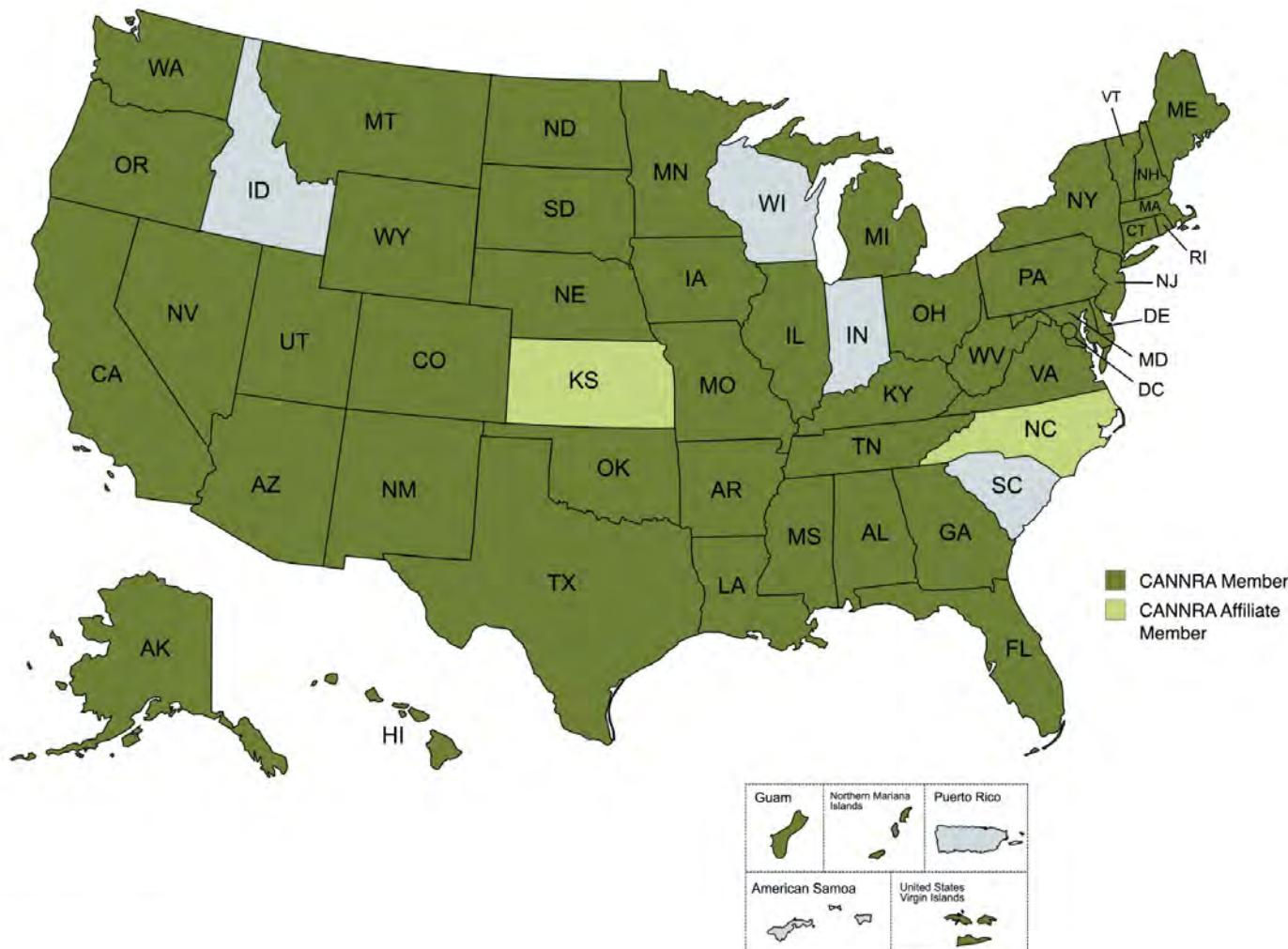
The views and opinions expressed in this presentation are solely my own and do not reflect any official policy, position, or legal advice of Vicente LLP or any of its clients.

# Who is CANNRA?

- Association of government agencies across the US and internationally
- Nonpartisan
- Nonprofit
- Focused on education and communication across governments (not an advocacy group)
- Funded primarily by government membership dues
- Engaged in research where it supports regulatory work
- Seek to hear and understand all perspectives on regulatory issues



# CANNRA Members



# Vicente. 15 Years.

**Vicente LLP** is the premier cannabis and psychedelics law firm. For over 15 years, the firm has helped clients navigate laws and regulations, build and grow businesses, and shape public policy to advance the legal cannabis, hemp, and psychedelics industries across the globe.

- **Offices across the nation:** California, Colorado, Florida, Massachusetts, Michigan, Minnesota, New York, New Jersey, Texas.
- **Services include:** Federal, state and local licensing, corporate and transactional, regulatory compliance, litigation, economic analysis, market research, policy drafting and advocacy, real estate, and government relations.

# Session overview:

- Federal policy lay of the land
- What's happened federally in the past two months:
  - New hemp policies from the 2025 Appropriations bill
  - Presidential Executive Order on Marijuana Rescheduling
- Q&A on federal landscape
- Hemp and hemp beverages
  - Considerations at the state level
  - Legal landscape and litigation pitfalls
- Q&A on federal landscape



# Federal Hemp Policy Change

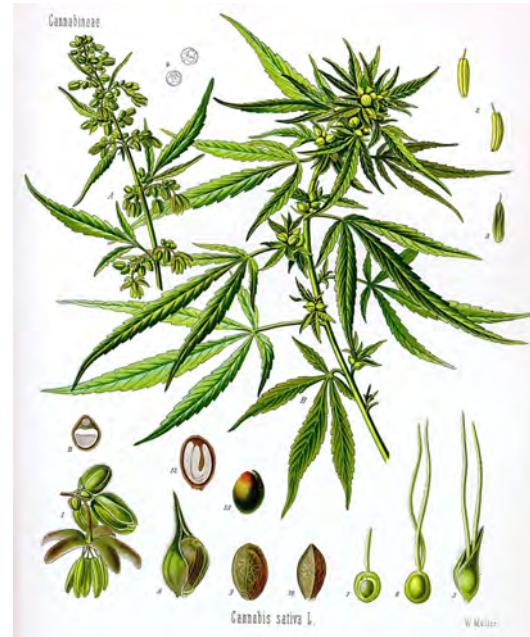
# Federal Status of *Cannabis Sativa L.* in the United States

## CANNABIS

- Federally illegal
- Regulated by states that have policies in place



>0.3%  
Delta-9  
THC by  
dry weight



≤ 0.3%  
Delta-9  
THC by  
dry weight



## HEMP

- Federally Legal
- Regulated federally by USDA as an agricultural plant



Products containing:  
Delta-9 THC, Delta-8 THC, CBD, CBN, CBG, etc.

# 2018 Farm Bill

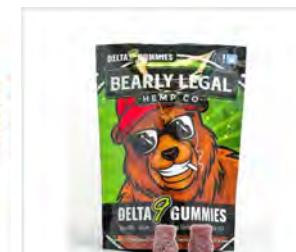
## 2018 Farm Bill Legalized:

“The plant species 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 THC concentration of not more than 0.3% on a dry weight basis.**”

*The Act did not name a regulator for finished cannabinoid products.*

*It noted that “nothing in this subtitle shall affect or modify the Federal Food, Drug, & Cosmetics Act,” or the authority of the Commissioner of Food and Drugs and the Secretary of HHS but did not specifically and clearly name a regulator for hemp-derived products (processing, retail, etc.).*

# What have states been seeing on the market?



Bearly Legal  
"Chocolate Caramel Taffy" | 150mg D9 Per Pouch | Delta-9 THC | 10ct

★★★★★ 29 reviews  
| No questions  
MSRP: \$4.99  
**\$29.99**

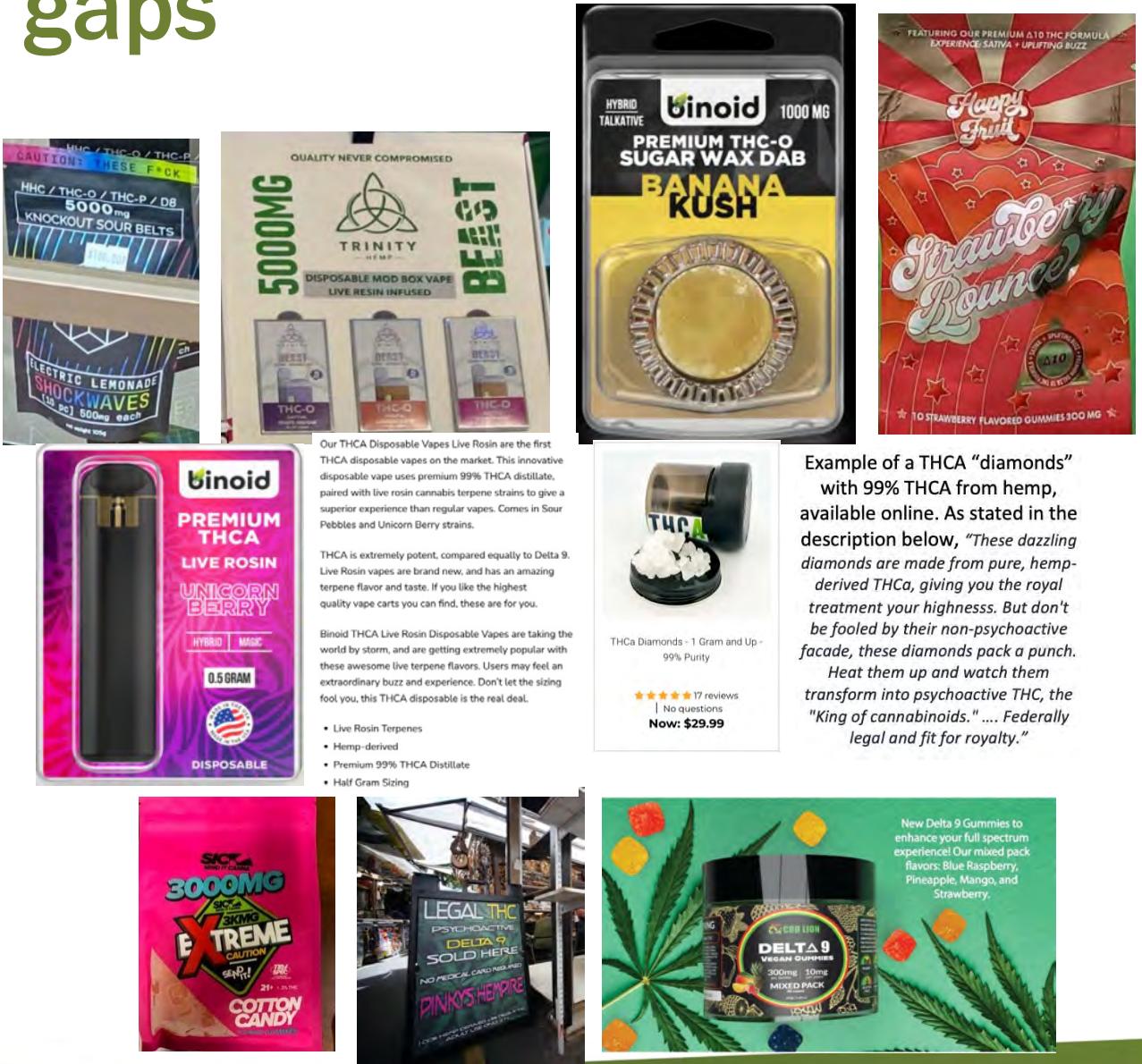


Bearly Legal  
"Grape Drink" Delta-9-THC D9 Gummy Bears - 10mg each - 25ct

★★★★★ 1 review | No questions  
MSRP: \$6.99  
**\$29.99**

# Three main regulatory gaps

- 1) Derivatives gap – Chemically derived impairing cannabinoids (Delta-8, Delta-10, HHC, THCO, etc.)
- 2) THCa gap – Products being marketed with high levels of THCa that are indistinguishable from cannabis products.
- 3) 0.3% loophole - Impairing amounts of Delta-9 THC in products that meet the legal definition of “hemp” per the 2018 farm bill.



Example of a THCA “diamonds” with 99% THCA from hemp, available online. As stated in the description below, “These dazzling diamonds are made from pure, hemp-derived THCa, giving you the royal treatment your highness. But don’t be fooled by their non-psychoactive facade, these diamonds pack a punch. Heat them up and watch them transform into psychoactive THC, the “King of cannabinoids.” .... Federally legal and fit for royalty.”

# Process for chemically deriving cannabinoids....



HEMP



CBD EXTRACT



ACIDS

HEAT

SOLVENTS

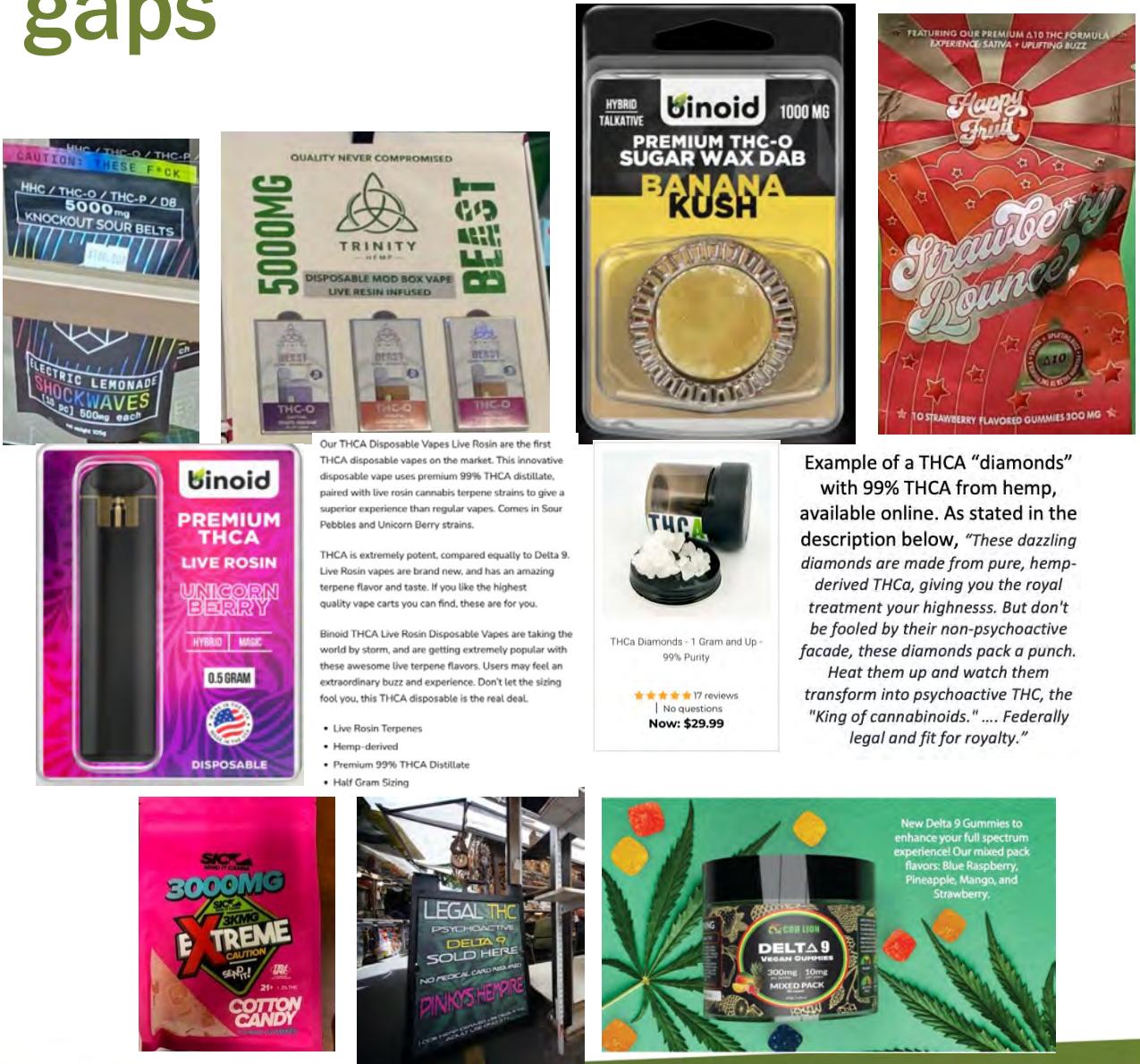


OTHER  
CANNABINOIDS

(Delta-8, Delta-10,  
HHC, THCO, THCP,  
THCV, THCH, THCjd,  
11-HO-THC, etc.)

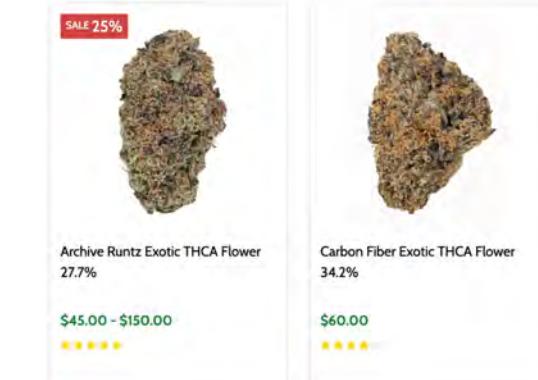
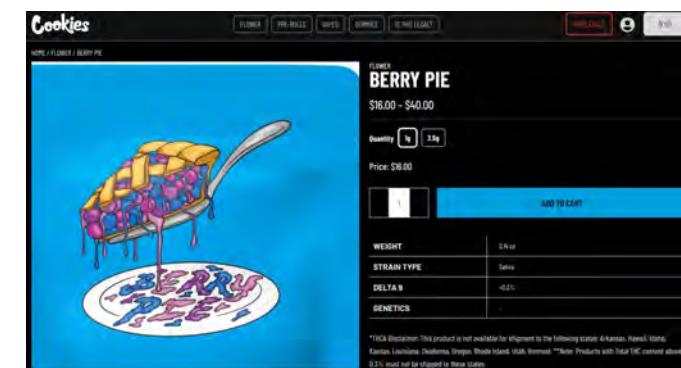
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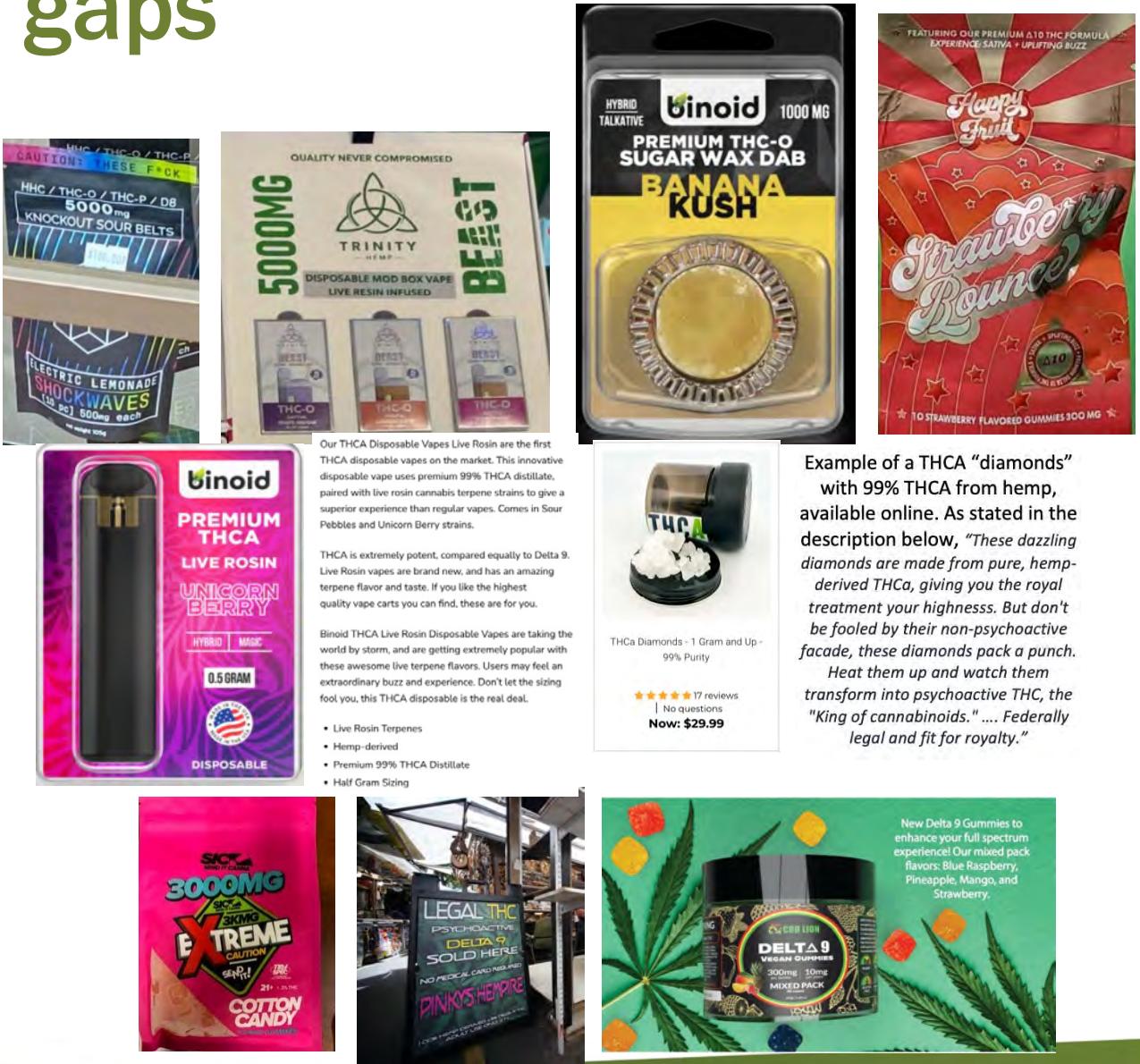
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# What is THC-A?



# Three main regulatory gaps

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# Consumer Safety Concerns

- Consumer confusion – what is “hemp”?
- Molecules that are new and unknown
- Lack of product testing and oversight
- No federal regulation over finished products for safety, accuracy, quality
- Medical claims that are not approved by the FDA and/or supported by research
- Potency, serving sizes and package limits that far exceed the regulated marijuana market



## Pain Relief Hemp Gummies to Kick Pain in the Butt

Pain, meet your match with these hemp gummies for pain, formulated with a spicy combination of hemp and adaptogens. This hemp for pain formulation is a full-strength combination of full-spectrum hemp and Ginger Extract, an anti-inflammatory, to help you give pain the kick in the butt it needs.



**binoid**

DELTA 8 • DELTA 9 • THCA • HHC-P • THC-P • THCB

### HHC-P PRODUCTS

Buy HHC-P products online including vape cartridges, disposables, lectures, and more below.

HHC-P is a new legal category that is hemp-derived. Made in The USA, and 100% Natural. HHC-P is a lot stronger than other THC cannabinoids and equal strength to THC-P as the HHC equivalent. It is not to be confused with Delta 9 THC.



CANNABIS REGULATORS ASSOCIATION

Overview of the 2025 U.S. Congressional Appropriations Language on Hemp  
November 2025

**TOP-LINE SUMMARY:**

- This Act changes language in the Agricultural Marketing Act of 1946;
- This Act separates cannabinoid hemp products from industrial hemp;
- This Act outlaws cannabinoid hemp products that have >0.4mg Total THC (and any other cannabinoids determined to have similar effect) per container;
- This Act outlaws synthetic cannabinoids, including those that are synthesized versions of naturally occurring cannabinoids;
- This Act creates a new definition for industrial hemp that does not include cannabinoid products;
- Hemp provisions in this Act are effective 365 days after its enactment.
- Within 90 days of enactment, FDA must publish information related to intoxicating cannabinoids, naturally occurring cannabinoids, and anything additional related to defining "container."
- Many unknown factors remain in terms of implementation, including what federal enforcement might look like, whether additional implementation guidance will be provided to states, and how states will implement this policy.

On November 12, 2025, the President signed "[An Act Making Continuing Appropriations and Extensions for Fiscal Year 2026](#)" into law. The Act contains 6 pages related to hemp (pages 156-162).

**WHAT DOES THE ACT CHANGE RELATED TO HEMP?**

The Act changes the language in the Agricultural Marketing Act of 1946 to do the following:

- It expressly adds *Total THC* (a measure of the total of all tetrahydrocannabinol compounds), including tetrahydrocannabinolic acid (THCa – which is a precursor to delta-9 THC in the plant) to the definition of the "0.3%" on a dry weight basis.
- It separates industrial hemp from cannabinoid hemp.
- It excludes from the definition of "hemp" the following:
  - Seeds that come from a marijuana plant (i.e., a plant that exceeds 0.3% total THC on a dry weight basis);
  - Any intermediate or final hemp-derived cannabinoid products with:
    - Cannabinoids not produced naturally in the plant;
    - Cannabinoids capable of being produced naturally in the plant, but synthesized outside the plant;
    - Products with more than 0.3% combined total (for intermediate products) or 0.4mg total per container (for final products) of:
      - Total THC (including THCa)
      - Any other cannabinoids with similar effects, or marketed to have similar effects (as determined by HHS)
- It defined industrial hemp specifically as hemp that is:
  - Grown for use of the stalk of the plant, fiber produced from such stalk, or any other non-cannabinoid derivative, mixture, preparation, or manufacture of such a stalk;

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# Federal Hemp Policy Change

- “An Act making continuing appropriations and extensions for fiscal year 2026, and for other purposes”
- Signed into law by the President on November 12, 2025.
- Contains 6 pages related to hemp (pages 156-162)
- This language does not have to be renegotiated with appropriations bills next year because it changed existing federal law....

# What does this Act do?

**As of November 12, 2026 , this act:**

- Changes the language in the Agricultural Marketing Act of 1946;
- Separates hemp-derived cannabinoid products from industrial hemp;
- Creates a new definition for industrial hemp that does not include cannabinoid products;
- Excludes from the definition of hemp:
  - Synthetic cannabinoids, including those that are synthesized versions of naturally occurring cannabinoids;
  - Seeds that come from a marijuana plant
  - Final cannabinoid hemp products that have >0.4mg Total THC (and any other cannabinoids determined to have similar effect) per container (*intermediate products allowed to have 0.3% total THC by weight*);

**Within 90 days of enactment, FDA must publish:**

- (1) A list of all cannabinoids known to be naturally produced by the cannabis plant, (2) A list of all THC class cannabinoids occurring in the plant, (3) A list of all other known cannabinoids with similar effects to THC, or marketed to have similar effects, and (4) Additional specificity about the term “container.”

# What happens next, federally?

- 90-day clock on FDA work has already started to identify intoxicating cannabinoids, identify phytocannabinoids, and further define “container” (*due mid February*)
- Discussions are happening about a minibus Farm Bill
- Discussions are happening about other potential Congressional hemp regulatory bills



# What's still unknown

- What federal enforcement will look like (and who might enforce this law);
- If there will be a Cole-like memo to provide guidance to states who exercise states rights to continue a cannabinoid hemp program in the state;
- What additional federal bills or regulations may come on top of this one;
- What will happen during the sell-down period (the 365 days leading up to full implementation);
- What major national players in this space will do (e.g., Total Wine, Shopify, Circle K, etc.);
- How federal alcohol laws and requirements will impact engagement by alcohol wholesalers, retailers, and brands in the THC beverage space now that specific law exists federally outlawing the vast majority of THC beverages on the national market.

# Other comments and considerations

- This will immediately impact capital, banking, insurance, and more for the hemp industry;
- This kicks the issue to the states to some degree – and states will likely address this differently from state to state based on a variety of factors;
- It will be important to keep consumer safety and public health in focus during state discussions about next steps;
- In an unprecedented way, this bill codified an allowable limit of THC into law – this could have implications for rescheduling discussions (since no other Schedule 1 substances have allowable limits set for access by the general population);
- This provides a new opportunity for industrial hemp – we will likely see more federal activity around developing and furthering an industrial hemp market in the U.S.



December 18<sup>th</sup>  
Presidential  
Executive Order

Overview of the President's December 18<sup>th</sup> Executive Order and the Implications When Marijuana is Rescheduled to Schedule III under the U.S. Controlled Substances Act  
December 2025

#### TOP-LINE SUMMARY

The President signed an Executive Order on December 18, 2025, ordering his administration to move expeditiously to reschedule marijuana to Schedule III under the U.S. Controlled Substances Act. A final rule to reschedule marijuana has not yet been issued by the Department of Justice. The timeline for a final rule remains unknown, and until there is a final rule, marijuana remains Schedule I.

#### Rescheduling marijuana to Schedule III will:

- Remove the applicability of section 280E of the federal tax code, allowing marijuana businesses to deduct all standard business expenses in accordance with federal law, even if the Schedule III marijuana product is not a U.S. Food and Drug Administration (FDA) approved drug.
- Potentially make it easier to obtain and maintain a U.S. Drug Enforcement Administration (DEA) registration as a Schedule III research facility to research marijuana.

#### Unless otherwise specified through new agency rules or policies, rescheduling marijuana will not:

- Change the federal status of state-regulated markets, which would remain non-compliant with U.S. federal law.
- Allow marijuana products that are not FDA-approved drugs to be prescribed by a doctor for a medical condition.
- Legalize interstate commerce. Interstate commerce of Schedule III drugs requires approval from the FDA, and necessary approvals and licenses under the Controlled Substances Act, as issued by DEA.
- Allow for the use of real-world cannabis products in human research, unless they meet FDA requirements for safety and quality through an Investigational New Drug (IND) Application.
- Change existing industry guidance from the Financial Crimes Enforcement Network (FinCEN), unless new guidance is released by the U.S. Department of Treasury.
- Change federal drug testing requirements, unless otherwise specified by appropriate federal agencies.
- Change criminal penalties for individuals found to be trafficking marijuana.

On December 18, 2025, the President signed an Executive Order entitled, "Increasing Medical Marijuana and Cannabidiol Research." Through the Executive Order the President orders:

- 1) The Attorney General (AG) to:
  - a. Take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III under the U.S. Controlled Substances Act (21 U.S.C.) in the most expeditious manner in accordance with Federal law, including 21 U.S.C. 811 (which is the part of the U.S. Controlled Substances Act that authorizes the AG to issue a Final Order placing a substance in the Schedule the AG deems most appropriate while bypassing the procedures described by other subsections of the CSA in order to comply with international treaty obligations).
- 2) The Assistant to the President and Deputy Chief of Staff for Legislative, Political, and Public Affairs to work with Congress to:
  - a. Update the statutory definition of final hemp-derived cannabinoid products to allow American to benefit from access to appropriate full-spectrum CBD products while preserving the Congress's intent to restrict the sale of products that pose serious health risks.

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# Executive Order on Marijuana

## *"Increasing Medical Marijuana and Cannabidiol Research"*

- 1) Calls on the Attorney General to expedite rescheduling marijuana to Schedule III.
- 2) Calls on Congress to work with the Executive Branch to: 1) update the definition of hemp to allow for "full-spectrum CBD products," and 2) to develop a regulatory framework for hemp that takes into account guidance on an upper limit of THC per serving and CBD:THC ratios.
- 3) Calls on the Secretary of HHS, Commissioner of FDA, Administrator of CMS, and Director of NIH to develop research methods and models using real world evidence to improve access to hemp-derived cannabinoid products.

# Summary and Implications:

- Marijuana has NOT been rescheduled yet (and rescheduling will still take time)
- If marijuana is rescheduled, it is unlikely to change state markets – state regulated products are not FDA approved drugs and thus do not meet the requirements as a Schedule III “drug”.
- Interstate commerce is still NOT legal for marijuana under Schedule III.
- The big impact would relate to marijuana (and cannabinoid hemp) industry tax deductions: Section 280E of the federal tax code that prohibits businesses from deducting business expenses if they are trafficking a Schedule I or II substance. Moving marijuana to Schedule III allows for normal business deductions. Other existing financial guidance under FinCEN would still apply unless otherwise specified.
- Research will get a little easier, but substantial agency-level policy changes would be needed to further facilitate research of marijuana and cannabinoid products.

# What remains unknown following the Executive Order?

- What the process and timeline will be for a Final Rule from the AG and DOJ on the Schedule III designation. *Marijuana remains Schedule III until a Final Rule is implemented.*
- What litigation will follow a final rescheduling rule
- Whether Congress will act to change federal laws related to the schedule or to hemp
- What new agency rules and policies will follow the Executive Order
- Details for the CMS Innovation Center Pilot on reimbursement for some CBD products for some Medicare patients that was mentioned in the EO Press Event (but is not in the EO)...
- The timing and process for designated health agencies to establish guidance and recommendations for an upper limit of THC per serving and CBD:THC ratio requirements.

# Take aways

- **Federal hemp policy will likely change dramatically in November 2026 – kicking things to states (we will talk more about this in the next block of this session)**
- New federal hemp policy will outlaw synthetics and limit final hemp-derived cannabinoid products to 0.4mg total THC (including THCa) and other intoxicating cannabinoids.
- **Marijuana has NOT been rescheduled to Schedule III yet and even if a final rule is released, implementation may be tied up in years of litigation.**
- The biggest impact of rescheduling would be related to industry tax deductions. This would benefit both marijuana and cannabinoid hemp industries.
- States will continue to be laboratories of policy experimentation for both marijuana and hemp -- this is the topic of our next block of this session).



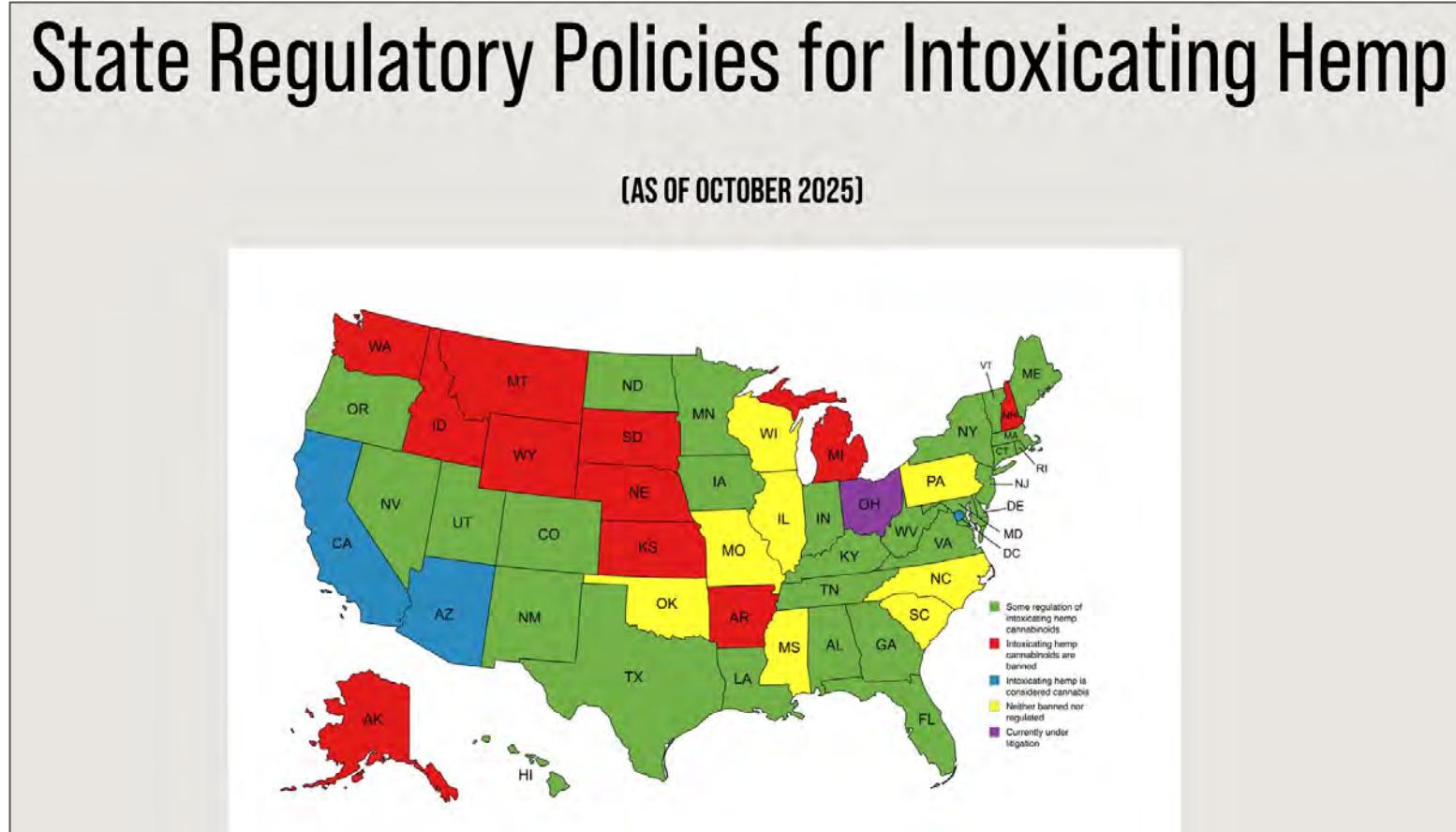
# Q&A on the Federal Landscape

# Cannabinoid Hemp Products and Hemp Beverages



# Lay of the land

- 2019-2025 → Huge increase across ALL states in cannabinoid hemp products on the market
- 2021 – States start to act to regulate or ban
- 2025 – No state has the same policy in place – variation in terms of allowable products, serving sizes/package limits, definitions, taxation, and overall regulation
- 2026– Federal policy will take effect; most states likely to be out of compliance with federal law



# Regulatory challenges for cannabinoid hemp

- Different regulatory approaches for cannabinoid hemp vs. marijuana when products are effectively the same thing;
- No or little funding for enforcement to implement regulatory framework for hemp;
- Major challenges regulating interstate commerce and e-commerce;
- Consumer confusion about what these products are, how to use them, and how to avoid potential risks;
- Lack of research to guide regulations;
- Blurred lines with illicit market;
- Litigation

## Supreme Court sides with trucker fired after CBD product triggered failed drug test

By John Fritze, CNN  
© 3 min read · Published 10:07 AM EDT, Wed April 2, 2025



## CONNECT WITH Bus driver who claimed to accidentally eat THC gummies, pass out on highway granted probation

The bus driver alleged he unknowingly ate THC-infused candies because he cannot speak or read English

By Timothy H. Morris / Fox News

Published: 10:07 AM EDT, Wed April 2, 2025



This Drug Gets You High, and Is Legal (Maybe) Across the Country

A once-agricultural derivative of hemp has become a hot seller for people looking for a non-pharmaceutical alternative.



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## In Southern Oregon, Illegal Cannabis Has Overwhelmed the Legal Industry

To residents of Cave Junction, the legacy of legal weed is a pattern of extraction and exploitation that recalls the boom years of the timber industry. But this time, the exploiters are criminal enterprises.

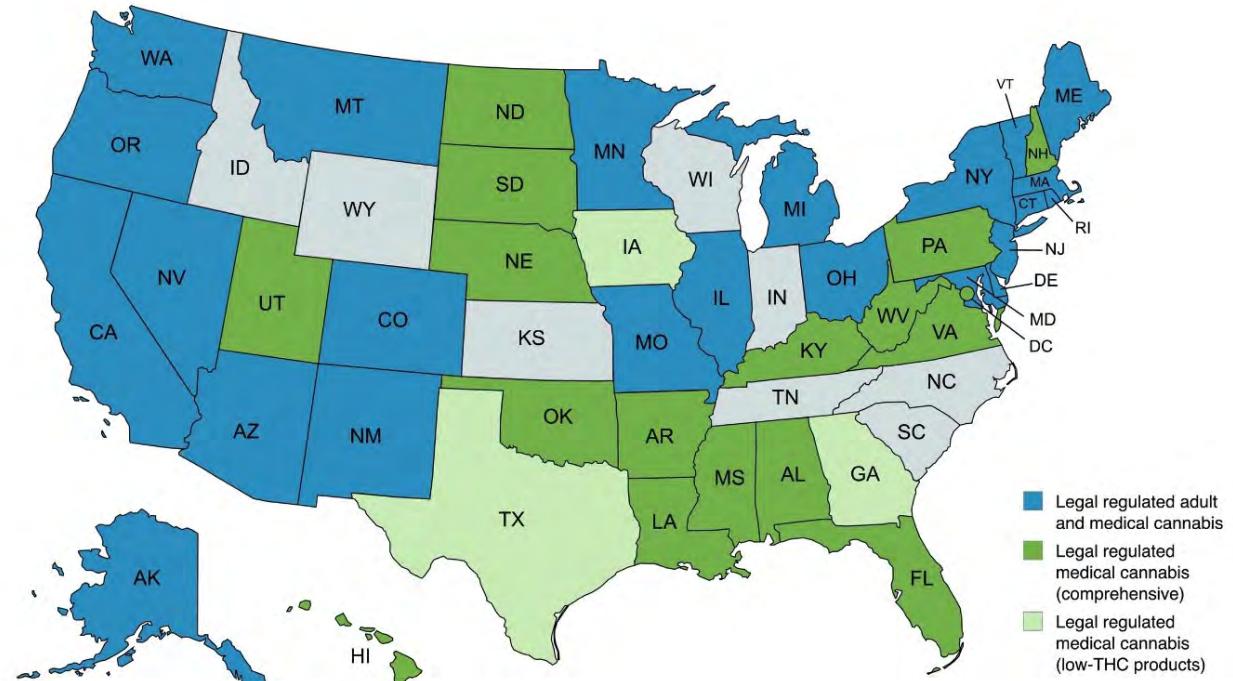


# Hemp Litigation Themes

- **AK Futures/Andersen v. Diamondback:** These cases hold that delta-8 THC, THCO, and virtually all derivatives are legal hemp under the 2018 Farm Bill.
- **Preemption:**
  - Express: The 2018 Farm Bill's express preemption provision prohibits states from stringently regulating intoxicating hemp products because any restrictions inevitably interferes with the interstate transportation of hemp.
  - Conflict: States are preempted from altering the definition of hemp because any change conflicts with the 2018 Farm Bill's definition of hemp.
- **Dormant Commerce Clause**: State laws discriminate against out-of-state hemp businesses/products.
- **Vagueness**: State laws are so vague that they fail to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.

# Potential new challenges for states to consider in 2026

- Viability of an *intra-state* market
- Risks of state deviation from federal law with new federal policies
- Access to ingredients needed to manufacture legal products in state
- For states with state-regulated marijuana markets – how cannabinoid hemp products interact with those markets



# Predicting 2026 Litigation Landscape

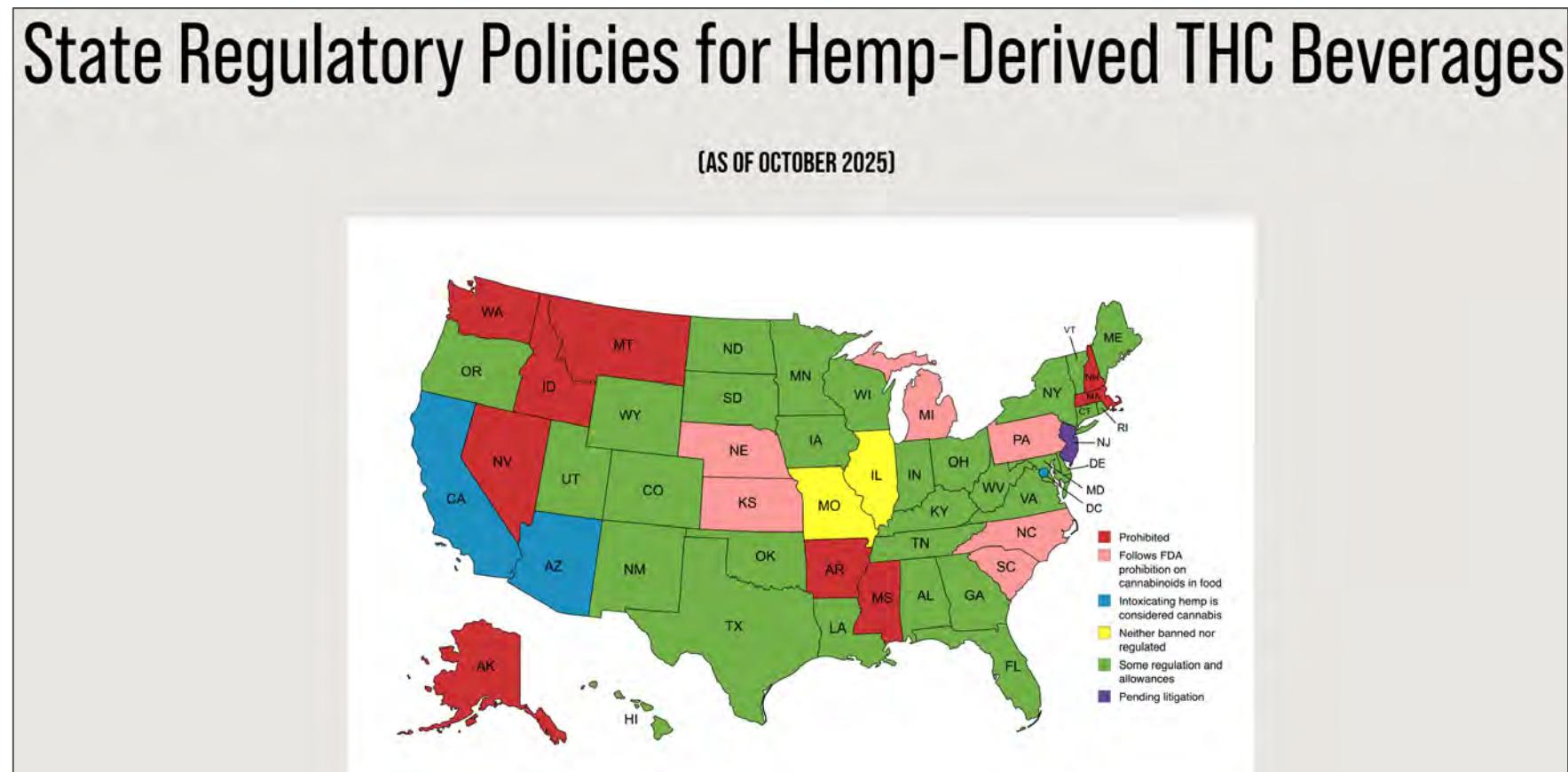
- States implementing change prior to November, 2026 effective date;
- Municipalities implementing change prior to November, 2026 effective date;
- Heightened state enforcement actions;
- New focus on interstate transportation of non-compliant products and intermediate hemp extract;
- Tensions between state executive branch and legislative branch.



**Specific  
considerations  
for hemp-  
derived  
beverages**

# Lay of the land

- Trend towards states setting different policies for THC beverages;
- New category; growing category;
- Very different state policies in terms of limits, allowable products;
- Different than alcohol in terms of regulatory considerations.



# Specific considerations for regulation of hemp-derived beverages

- Ingredients (access to ingredients as well as what should be allowed in terms of additives)
- Allowable product forms
- Testing requirements
- Retail access and age-gating
- Packaging, labeling, marketing
- Consumer education
- Taxation
- Compliance with alcohol/liquor laws, policies, insurance, etc. at the national and federal level



Q&A and Open  
Discussion