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Farm Bill Primer: Selected Hemp Industry Issues

Hemp is a variety or cultivar of *Cannabis sativa*—the same plant as marijuana—grown to produce nonpsychoactive food, beverage, consumer, and industrial products. The 2018 farm bill (Agriculture Improvement Act of 2018; P.L. 115-334) legalized hemp by removing *hemp* (as defined, see **text box**) from the definition of *marijuana* in the Controlled Substances Act (CSA, 21 U.S.C. §§802 et seq.). The 2018 farm bill further directed the U.S. Department of Agriculture (USDA) to create a framework to regulate hemp cultivation under federal law and facilitate commercial cultivation, processing, marketing, and sale of hemp and hemp-derived products. USDA published its final hemp regulations in 2021. Other 2018 farm bill provisions made hemp producers eligible for federal crop insurance and agricultural research programs. Congress may consider further amendments as it debates the next farm bill.

Overview of U.S. Hemp Cultivation

USDA reports that the farm-level value of total utilized hemp production was \$238.4 million in 2022, down from \$824 million in 2021 (**Table 1**). This total spans all production types (i.e., grown in the open field or under protection, such as in a greenhouse) and all market segments (i.e., hemp flower, grain, seed, and fiber). Floral hemp grown in the open was the dominant type of hemp grown in 2022, as measured by total value and acreage. By comparison, the value and acreage dedicated to hemp fiber, grain, and seed production was lower. Floral hemp tends to command higher market prices compared with other marketable uses for hemp. (See CRS In Focus IF11860, *Production, Marketing, and Regulation of Hemp Products*.)

In 2022, U.S. hemp growers planted 28,300 acres of hemp and harvested about 18,300 acres, accounting for a small share of total U.S. harvested cropland acres (<0.1%). The difference between planted and harvested hemp acres may reflect the difference between legal hemp that falls within legal THC limits and noncompliant (or “hot”) hemp that may not enter allowable U.S. marketing channels. USDA estimates about 20% of hemp grown during the crop year will exceed legal THC limits, demonstrating the inherent risks to farmers of growing hemp within USDA’s regulatory framework. Harvested acres of hemp grown in the open in 2022 included 6,850 acres for fiber, 5,379 acres for grain, 812 acres for seed, and 7,105 acres of floral hemp. (Reported acres across different market segments are not additive given multi-crop production in some cases.)

Hemp is grown in all U.S. states under a USDA-approved state plan or a USDA general license. The leading hemp producing states, with more than 1,000 harvested acres grown in the open (2022), were South Dakota (2,550), Oregon (1,900), Montana (1,470 acres), Missouri (1,400),

and Kentucky (1,300). Production by state tends to be highly variable year-to-year.

Terms and Definitions

Hemp—Defined as “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 [THC] concentration of not more than 0.3 percent on a dry weight basis” (7 U.S.C. §1639o).

Cannabinoids—No specific definition of cannabinoids exists in the *U.S. Code*. *Cannabinoids* refer to the unique chemical compounds produced in the *Cannabis sativa* plant, which are known to exhibit a range of psychological and physiological effects. There are more than 100 cannabinoids in the cannabis plant. Tetrahydrocannabinol (THC) and cannabidiol (CBD) are the two most well-researched and abundant cannabinoids.

See CRS Report R44742, *Defining Hemp: A Fact Sheet*.

Table 1. U.S. Hemp Production by Market, 2021-2022

Production Type and Market Segment	2021	2022	Change
	(\$million)		(percentage)
Hemp Production in Outdoor Open Field			
Floral hemp	623.2	179.0	-71%
Hemp grains	6.0	3.6	-40%
Hemp fiber	41.4	28.3	-32%
Hemp seed	41.5	1.5	-96%
Subtotal	712.2	212.4	-70%
Hemp Production Under Protection			
Floral hemp	64.4	24.7	-62%
Hemp seed	23.7	0.6	-98%
Clones/Transplants	23.8	0.7	-97%
Subtotal	111.9	26.1	-77%
Total Farm-Level Value	824.1	238.4	-71%
Planted Acres (all uses)	54,152	28,314	-48%

Source: CRS from USDA’s 2021 and 2022 National Hemp Report. May not add due to rounding. Reported acres across different market segments are not additive given multi-crop production in some cases.

Addressing Hemp in the Next Farm Bill

Hemp industry interests cover many national and regional groups with different policy goals and priorities. These priorities often are tied to the primary products they produce and/or represent or may be based on the part of the hemp plant used (e.g., whether hemp is grown for fiber for industrial uses or for use in seed-derived food ingredients or as a dietary supplement or wellness product). To date, the

Food and Drug Administration (FDA) has acknowledged three hemp product categories—hulled hemp seed, hemp seed protein, and hemp seed oil—as generally recognized as safe (GRAS) for use in human food.

Most national farm and herbal/dietary supplement groups, as well as some state and professional organizations, have developed policy positions related to hemp. In addition, over the years, numerous hemp-specific interest groups have emerged. Some national hemp producer groups (listed by year founded) are Hemp Industries Association (1994); Vote Hemp (2000); National Hemp Association (2014); U.S. Hemp Roundtable (2017); National Industrial Hemp Council (2019); U.S. Hemp Growers Association (2019); and the American Trade Association for Cannabis and Hemp (2019). These interest groups often have differing priorities, which may complicate U.S. hemp policymaking. Moreover, the interests of these groups often span the use of hemp as an industrial input, as a food ingredient, and as a dietary supplement ingredient.

Modifying USDA's Hemp Regulation

A possible shared policy priority among these interest groups is to relax some of USDA's regulatory requirements, which some grower groups and state regulators contend are overly restrictive and impractical. For example, some stakeholders want to reduce the oversight role of the Drug Enforcement Administration (DEA) in regulating hemp, including removing the requirement that hemp be tested at DEA-registered labs or that eligible testing labs be DEA-accredited. Some groups want to repeal the existing exclusion preventing most persons with a felony controlled-substance-related conviction from obtaining a hemp license. Congress specifically included DEA's consultative role in USDA's regulation and the felon exclusion in the 2018 farm bill. H.R. 1428 would remove these requirements.

Some support establishing separate requirements for different end products. H.R. 3755/S. 980 would exempt farmers that grow hemp fiber and grains from background checks and sampling and testing protocols that are required for farmers growing hemp for use in cannabinoid products. In general, most countries with legalized hemp and other cannabis varieties, including the United States, regulate hemp fiber and grain separately from hemp cannabinoids, including low-THC cannabis extracts. Previously introduced legislation further sought to amend the statutory definition of hemp to raise the allowable legal THC level from 0.3% to 1% (e.g., S. 1005; H.R. 6645 [117th Congress]) to provide additional flexibility to growers and avoid crop destruction if hemp fields exceed the legal limit.

Some continue to oppose USDA's regulatory requirement that testing for THC content of a hemp sample be based on Total THC, which includes the potential conversion of tetrahydrocannabinolic acid into THC rather than the delta-9 THC concentration specified in hemp's statutory definition. USDA reconsidered alternative testing methods but retained Total THC because not all testing methods include decarboxylation, among other reasons (see 86 *Federal Register* 5619-5621). Decarboxylation refers to the process that activates the psychoactive compounds in the

cannabis plant. Changes to USDA's testing methods could require USDA to conduct rulemaking and comment procedures, which could further delay development of the U.S. hemp industry. Another regulatory aspect USDA reconsidered but retained was its decision that its hemp regulation would not require use of government-certified or approved seed for planting or processing. Hemp regulations in certain other countries require use of certified hemp seed. USDA claims that developing certified seed requirements would necessitate additional rulemaking. USDA's rationale for not adopting a certified seed requirement is documented in its 2021 final rule (86 *Federal Register* 5625-5626).

Addressing Product Safety Concerns

The 2018 farm bill addressed hemp cultivation only and did not directly address some consumer products containing hemp or hemp ingredients subject to FDA regulation. Congress explicitly preserved FDA's authority related to hemp products (§10113), and it remains unclear whether changes to FDA laws and regulations fall within the jurisdiction of the agriculture committees. Since 2018, certain hemp consumer products have remained unapproved and unregulated while FDA reviews the safety of hemp-derived cannabinoids, including cannabidiol (CBD). During this time, Congress has introduced legislative proposals that would remove FDA restrictions on the marketing of food and dietary supplements containing added hemp-derived cannabinoids; some proposals would establish federal quality and safety standards and labeling requirements for such products (e.g., H.R. 4849/S. 2451, H.R. 1628, H.R. 1629). Still others seek to ban certain hemp derivatives and cannabinoids, as some consumer products have been shown to pose a risk to public safety and because of ongoing concerns about FDA oversight of these products. In January 2023, FDA issued a statement that it would “work with Congress” to develop “a new regulatory pathway” for CBD. This action followed years of FDA review related to CBD product regulation. In July 2023, several Members issued a request for information soliciting stakeholders on how to “provide a legal pathway” for marketing CBD products. See CRS In Focus IF10391, *Hemp-Derived Cannabidiol (CBD) and Related Hemp Extracts*.

Enhancing USDA Support for Hemp

Most hemp advocates seek to expand USDA farm program support for hemp and hemp products. This includes efforts to expand research related to genetics and management practices and targeted support to develop processing capacity of hemp fibers for use in insulation, construction materials, and plastics. Some call for expanding support for hemp climate-smart and sustainability practices, promoting hemp's soil carbon sequestration and phytoremediation properties. Others seek to add hemp to the statutory definition of a *specialty crop* (7 U.S.C. §1621 note), which most fruit and vegetable groups oppose. Designating hemp as a specialty crop could qualify hemp for USDA programs that tie eligibility to the specialty crop definition. Some prioritize expanding federal crop insurance and improved risk management tools, given the risks involved in growing hemp (see CRS In Focus IF11919, *Federal Crop Insurance for Hemp Crops*), along with improving access to credit and banking services (see H.R. 2891 and S. 2860).

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