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# Hemp as an Agricultural Commodity

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## Summary

Industrial hemp is an agricultural commodity that is cultivated for use in the production of a wide range of products, including foods and beverages, cosmetics and personal care products, nutritional supplements, fabrics and textiles, yarns and spun fibers, paper, construction and insulation materials, and other manufactured goods. Hemp can be grown as a fiber, seed, or other dual-purpose crop. However, hemp is also from the same species of plant, *Cannabis sativa*, as marijuana. As a result, production in the United States is restricted due to hemp's association with marijuana, and the U.S. market is largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing (mostly from Canada and China). Current industry estimates report U.S. hemp sales at nearly \$600 million annually.

In the early 1990s there was a sustained resurgence of interest to allow for commercial hemp cultivation in the United States. Several states conducted economic or market studies and initiated or enacted legislation to expand state-level resources and production. Congress made significant changes to federal policies regarding hemp in the 2014 farm bill (Agricultural Act of 2014 (P.L. 113-79, §7606). The 2014 farm bill provided that certain research institutions and state departments of agriculture may grow hemp under an agricultural pilot program. The bill further established a statutory definition for *industrial hemp* as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” Delta-9 tetrahydrocannabinol is the dominant psychotropic ingredient in *Cannabis sativa*. In subsequent omnibus appropriations, Congress has blocked the U.S. Drug Enforcement Administration (DEA) and federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research. Appropriators have also blocked the U.S. Department of Agriculture (USDA) from prohibiting the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with the 2014 farm bill provision.

Despite these efforts, industrial hemp continues to be subject to U.S. drug laws, and growing industrial hemp is restricted. Under current U.S. drug policy, all cannabis varieties—including industrial hemp—are considered Schedule I controlled substances under the Controlled Substances Act (CSA, 21 U.S.C. §§801 et seq.), and DEA continues to control and regulate hemp production. Strictly speaking, the CSA does not make growing hemp illegal; rather, it places strict controls on its production and enforces standards governing the security conditions under which the crop must be grown, making it illegal to grow without a DEA permit. In other words, a grower needs to get permission from DEA to grow hemp or faces the possibility of federal charges or property confiscation. Further guidance from DEA, USDA, and the Food and Drug Administration (FDA), issued in August 2016, provides additional clarification regarding federal authorities' position on industrial hemp and its future policies and enforcement actions regarding its cultivation and marketing. Although many in the U.S. hemp industry were encouraged by parts of the 2016 guidance, they have expressed concerns about other aspects of the statement.

Congress has continued to introduce legislation to further advance industrial hemp and could further address these concerns in the next farm bill. Legislation introduced in the House, as part of the Industrial Hemp Farming Act—first introduced in the 109<sup>th</sup> Congress—would amend the CSA to specify that the term *marijuana* does not include industrial hemp. A Senate companion bill was introduced in the 114<sup>th</sup> Congress. In addition, in the 114<sup>th</sup> Congress, bills were introduced in both the House and the Senate that would amend the CSA “to exclude cannabidiol and cannabidiol-rich plants from the definition of marijuana” intended to promote the possible medical applications of industrial hemp. These bills may be reintroduced in the 115<sup>th</sup> Congress.

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For centuries, industrial hemp (plant species *Cannabis sativa*) has been a source of fiber and oilseed used worldwide to produce a variety of industrial and consumer products. Currently, more than 30 nations grow industrial hemp as an agricultural commodity, which is sold on the world market. In the United States, however, production is strictly controlled under existing drug enforcement laws. Currently there is no large-scale commercial production in the United States, and the U.S. market depends on imports.

Congress made significant changes to federal policies regarding hemp in the 2014 farm bill (Agricultural Act of 2014, P.L. 113-79). The 2014 farm bill provided that certain research institutions and state departments of agriculture may grow hemp under an agricultural pilot program. In addition, in subsequent omnibus appropriations, Congress has blocked the U.S. Drug Enforcement Administration (DEA) and federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research. Appropriators have also blocked the U.S. Department of Agriculture (USDA) from prohibiting the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with the 2014 farm bill provision.

Despite these efforts, industrial hemp continues to be subject to U.S. drug laws, and growing industrial hemp is restricted. Under current U.S. drug policy, all cannabis varieties—including industrial hemp—are considered Schedule I controlled substances under the Controlled Substances Act (CSA),<sup>1</sup> and DEA continues to control and regulate hemp production.

Congress has sought to further distinguish between industrial hemp and marijuana. Among the bills addressing industrial hemp, the Industrial Hemp Farming Act would amend the CSA to specify that the term *marijuana* does not include industrial hemp, thus excluding hemp from the CSA as a controlled substance subject to DEA regulation. This bill was reintroduced from bills introduced in previous Congresses dating back to the 109<sup>th</sup> Congress. Other introduced legislation would amend the CSA “to exclude cannabidiol and cannabidiol-rich plants from the definition of marijuana” intended to promote the possible medical applications of industrial hemp. The 115<sup>th</sup> Congress may consider reintroducing these bills and other legislation in the lead up to the next farm bill debate.

## Hemp Production and Use

Botanically, industrial hemp and marijuana are from the same species of plant, *Cannabis sativa*, but from different varieties or cultivars that have been bred for different uses.<sup>2</sup> However, industrial hemp and marijuana are genetically distinct forms of cannabis<sup>3</sup> that are distinguished by their use, chemical makeup, and differing cultivation practices in production. While marijuana generally refers to the psychotropic drug (whether used for medicinal or recreational purposes), industrial hemp is cultivated for use in the production of a wide range of products, including foods and beverages, personal care products, nutritional supplements, fabrics and textiles, paper, construction materials, and other manufactured goods.

Both hemp and marijuana also have separate definitions in statute. While marijuana is defined in U.S. drug laws, Congress established a statutory definition for *industrial hemp* as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9

<sup>1</sup> 21 U.S.C. §§801 et seq.

<sup>2</sup> See, for example, “Purdue University Industrial Hemp Initiative,” NC-FAR Capitol Hill seminar, April 29, 2016.

<sup>3</sup> In this report, *cannabis* refers to the plant species *Cannabis sativa* L and all of its industrial, medicinal, and recreational varieties. The terms *industrial hemp* and *hemp* are used interchangeably, and the term *marijuana* refers to the plant used as a medicinal or recreational drug.

tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis” as part of the 2014 farm bill.<sup>4</sup> Hemp is generally characterized by plants that are low in delta-9 tetrahydrocannabinol (delta-9 THC), the dominant psychotropic ingredient in *Cannabis sativa*.<sup>5</sup>

For more background information, see CRS Report R44742, *Defining “Industrial Hemp”: A Fact Sheet*. However, joint guidance issued in August 2016 by DEA, USDA, and the Food and Drug Administration (FDA) suggests that there continues to be questions about what constitutes industrial hemp and its oversight under federal law.

## Commercial Uses of Hemp

The global market for hemp consists of more than 25,000 products in nine submarkets: agriculture, textiles, recycling, automotive, furniture, food and beverages, paper, construction materials, and personal care (**Table 1**). Hemp can be grown as a fiber, seed, or dual-purpose crop.<sup>6</sup> The stalk and seed are the harvested products. The interior of the stalk has short woody fibers called hurds; the outer portion has long bast fibers. Hemp seed/grains are smooth and about one-eighth to one-fourth of an inch long.<sup>7</sup>

Hemp fibers are used in fabrics and textiles, yarns and spun fibers, paper, carpeting, home furnishings, construction and insulation materials, auto parts, and composites. Hurds are used in animal bedding, material inputs, papermaking, and oil absorbents. Hemp seed and oilcake are used in a range of foods and beverages (e.g., salad and cooking oil and hemp dairy alternatives) and can be an alternative food and feed protein source.<sup>8</sup> Oil from the crushed hemp seed is used in soap, shampoo, lotions, bath gels, and cosmetics.<sup>9</sup> Hemp is also being used in nutritional supplements and in medicinal and therapeutic products, including pharmaceuticals. It is also used in a range of composite products. Hempcrete (a mixture of hemp hurds and lime products) is being used as a building material. Hemp is also used as a lightweight insulating material and in hemp plastics and related composites for use as a fiberglass alternative by the automotive and aviation sectors.<sup>10</sup> Hemp has also been promoted as a potential biodiesel feedstock<sup>11</sup> and cover crop.

<sup>4</sup> 7 U.S.C. §5940(b)(2). In contrast, marijuana is defined at 21 U.S.C. §802.

<sup>5</sup> R. C. Clarke and M. D. Merlin, *Cannabis: Evolution and Ethnobotany* (Berkeley, CA: University of California Press, 2013). A psychotropic drug is capable of affecting mental activity, behavior, or perception and may be mood-altering.

<sup>6</sup> Different developed varieties may be better suited for one use or the other. Cultivation practices also differ depending upon the variety planted. For more information, see CRS Report R44742, *Defining “Industrial Hemp”: A Fact Sheet*.

<sup>7</sup> For more background information, see USDA, *Industrial Hemp in the United States: Status and Market Potential*, AGES001E, January 2000.

<sup>8</sup> Some are promoting use of hemp as a rotational crop for use as an animal feed supplement (CRS communication with an Iowa cattle producer, February 28, 2016). See also B. Weaver, “Not Your Grandpa’s Farm: Hemp Industry Faces Growing Pains in Colorado,” *The Tribune*, October 1, 2016.

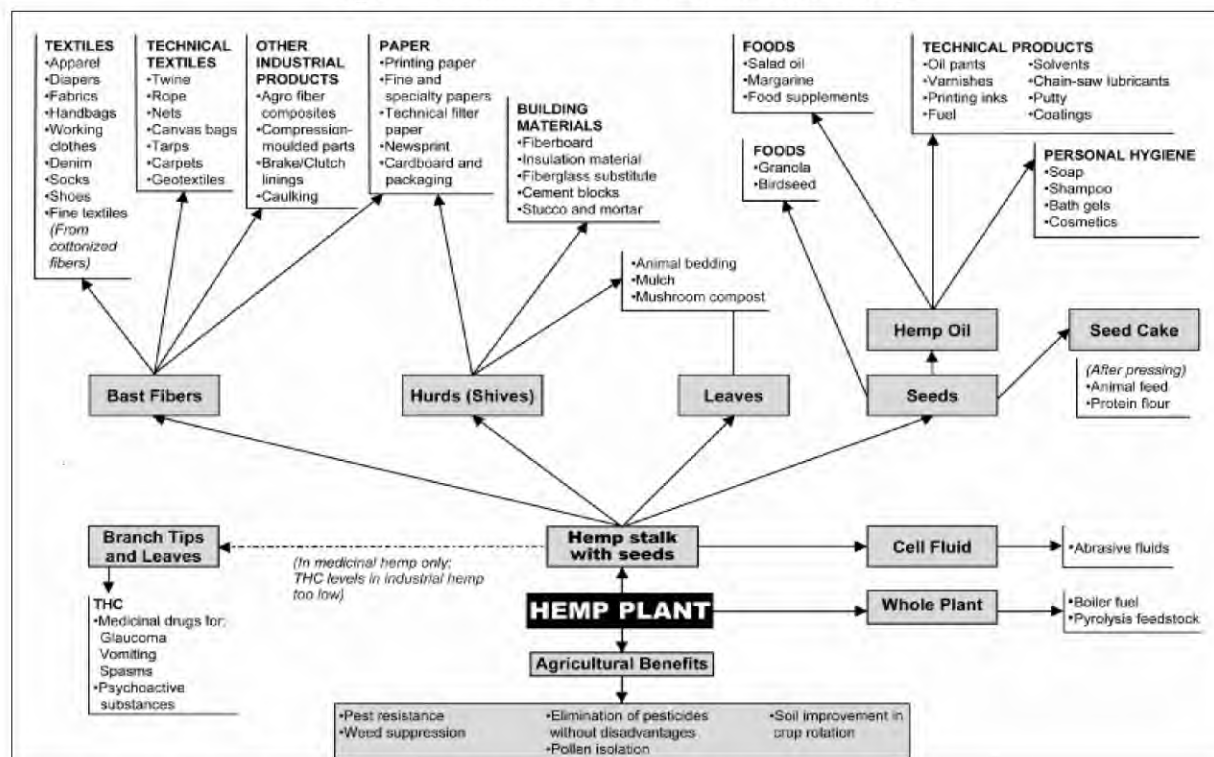
<sup>9</sup> Some have suggested similarities between hempseed oil and hash oil. However, there is evidence suggesting differences regarding initial feedstock or input ingredients (hash oil requires high-THC marijuana, whereas hempseed oil uses low-THC industrial hemp), how they are produced (hash oil is extracted often using a flammable solvent, whereas hempseed oil is expeller-pressed or extracted mechanically, generally without chemicals or additives), and how they are used (hash oil is used as a psychoactive drug, whereas hempseed oil is used as an ingredient in hemp-based foods, supplements, and body care products). For more background information, contact the author of this report.

<sup>10</sup> Virginia Industrial Hemp Coalition, “2015 Virginia Industrial Hemp Recommended Research Topics.”

<sup>11</sup> See, for example, M. H. Renfroe, “Investigation of Industrial Hemp for Oil and Biofuel Production in Virginia,” Annual Report to Virginia Department of Agriculture and Consumer Services, August 30, 2016.

These types of commercial uses are widely documented in a range of feasibility and marketing studies conducted by researchers at USDA and various land grant universities and state agencies. (A listing of these studies is in the **Appendix A.**) Currently, finished hemp products and raw material inputs are mostly imported into the United States and sold for use in further processing and manufacturing for a wide range of products.

**Figure 1. Modern Uses for Industrial Hemp**



**Source:** Industrial Hemp Association of Tasmania, <http://www.ihat.org.au/>.

**Notes:** Other hemp product charts include D. G. Kraenzel et al., "Industrial Hemp as an Alternative Crop in North Dakota," AER-402, North Dakota State University, July 23, 1998; and National Hemp Association, <http://nationalhempassociation.org/>.

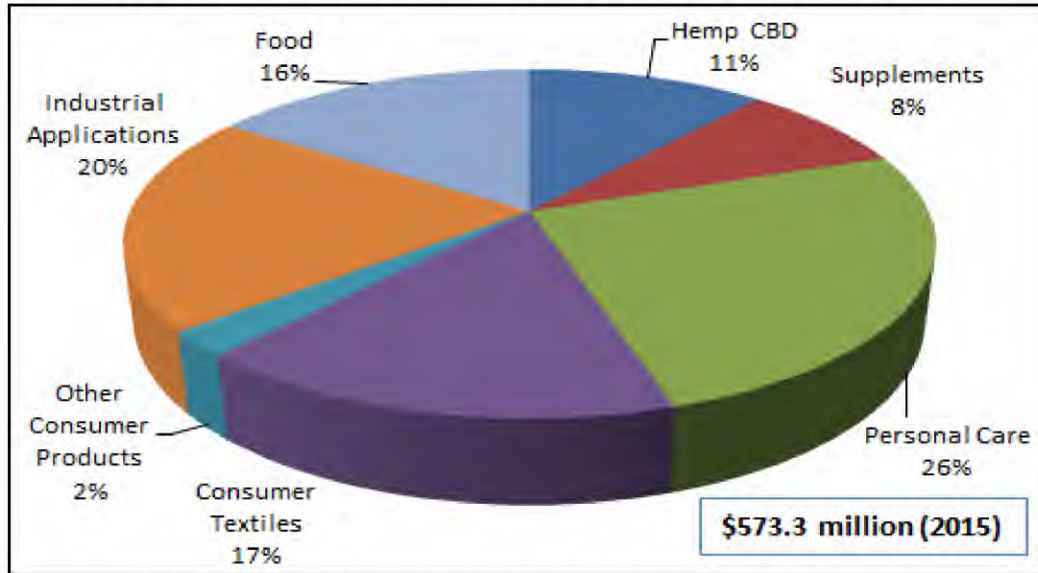
## Estimated Retail Market

No official estimates are available of the value of U.S. sales of hemp-based products. The Hemp Industries Association (HIA) reports that total U.S. retail sales of hemp products of nearly \$600 million in 2015,<sup>12</sup> which includes food and body products, clothing, auto parts, building materials, and other products (**Figure 2**). HIA further claims that growth in U.S. hemp retail sales averaged more than 15% annually over the 2010-2015 time frame. Much of this growth has been attributable to increased sales of hemp-based body products, supplements, and foods. Combined, these categories account for more than 60% of the value of U.S. retail sales.

<sup>12</sup> HIA, "2015 Annual Retail Sales for Hemp Products Estimated at \$573 Million," May 9, 2016. The reported retail value of the U.S. hemp market is an estimate based on SPINS survey data, which tracks data and market trends on natural product industry sales. SPINS data do not track retail sales for Whole Foods Market, Costco, and other retail outlets that market hemp-based products, and the reported data has been adjusted upward to account for these gaps.

Little detailed information is available on some other hemp-based sectors, such as for use in construction, biofuels, paper, textiles, or other manufacturing uses. Data are also not available on existing businesses or processing facilities.

**Figure 2. U.S. Hemp-Based Product Sales by Category, 2015**



Source: HIA, "2015 Annual Retail Sales for Hemp Products Estimated at \$573 Million," May 9, 2016.

## U.S. Hemp Imports

The import value of hemp-based products imported and sold in the United States is difficult to estimate accurately. For some traded products, available statistics have only limited breakouts or have been expanded only recently to capture hemp subcategories within the broader trade categories for oilseeds and fibers. Reporting errors are evident in some of the trade data, since reported export data for hemp from Canada do not consistently match reported U.S. import data for the same products (especially for hemp seeds).

Given these data limitations, available trade statistics indicate that the value of U.S. imports under categories actually labeled "hemp," such as hemp seeds and fibers—which are more often used as inputs for use in further manufacturing—was nearly \$78.2 million in 2015. Compared to 2005, when the value of imports totaled \$5.6 million, imported hemp products for use as inputs and ingredients has increased sharply. However, import volumes for other products, such as hemp oil and fabrics, are lower (**Table 1**). Trade data are not available for finished products, such as hemp-based clothing or other products including construction materials, carpets, or paper products.

The single largest supplier of U.S. imports of raw and processed hemp fiber is China. Other leading country suppliers include Romania, Hungary, India, and other European countries. The single largest source of U.S. imports of hemp seed and oilcake is Canada. The total value of Canada's exports of hemp seed to the United States has grown significantly in recent years following resolution of a long-standing legal dispute over U.S. imports of hemp foods in late 2004 (see "Dispute over Hemp Food Imports (1999-2004)"). European countries have also supplied hemp seed and oilcake to the United States.



**Table I. Value and Quantity of U.S. Hemp Imports, 1996-2015**

	Units	1996	2000	2005	2010	2011	2012	2013	2014	2015
<b>Hemp Seeds</b> (HS 1207990320)	\$1000	—	—	271	5,125	6,553	13,035	26,942	29,326	54,191
<b>Hemp Oil and Fractions</b> (HS 1515908010)	\$1000	—	2,822	3,027	1,833	1,146	1,098	2,264	3,446	4,836
<b>Hemp Seed Oilcake and Solids</b> (HS 2306900130)	\$1000	—	—	—	2,369	2,947	4,388	6,279	8,159	16,281
<b>True Hemp, raw/proc. not spun</b> (HS 5302)	\$1000	100	577	228	94	181	157	78	114	292
<b>True Hemp Yarn</b> (HS 5308200000)	\$1000	25	640	904	296	580	496	482	909	1,497
<b>True Hemp Woven Fabrics</b> (HS 5311004010)	\$1000	1,291	2,258	1,232	1,180	1,364	1,363	1,057	900	1,020
<b>Total</b>		<b>1,416</b>	<b>6,297</b>	<b>5,662</b>	<b>10,897</b>	<b>12,771</b>	<b>20,537</b>	<b>37,102</b>	<b>42,854</b>	<b>78,117</b>
<b>Hemp Seeds</b> (HS 1207990320)	metric ton	—	—	92	712	722	1,239	2,311	2,783	15,977
<b>Hemp Oil and Fractions</b> (HS 1515908010)	metric ton	—	587	287	215	157	208	450	1,155	538
<b>Hemp Seed Oilcake and Solids</b> (HS 2306900130)	metric ton	—	—	—	240	298	441	601	938	1,826
<b>True Hemp, raw/proc. not spun</b> (HS 5302)	metric ton	53	678	181	42	89	66	72	161	278
<b>True Hemp Yarn</b> (HS 5308200000)	metric ton	6	89	113	42	86	89	70	102	166
<b>Subtotal</b>		<b>59</b>	<b>1,354</b>	<b>673</b>	<b>1,251</b>	<b>1,352</b>	<b>2,043</b>	<b>3,504</b>	<b>5,139</b>	<b>18,785</b>
<b>True Hemp Woven Fabrics</b> (HS 5311004010)	m2 (1000)	435	920	478	284	270	319	224	151	206

**Source:** Compiled by CRS using data from the U.S. International Trade Commission, <http://dataweb.usitc.gov>. Data are by Harmonized System (HS) code. Data shown as “—” indicate data are not available as breakout categories or, for some product subcategories, were established only recently. Data are not adjusted for inflation.

**Notes:** Historical data for hemp seeds combine reported statistics for three HTS categories: HTS 1207990320 (2012-present), HTS 1207990020 (2007-2011) and HTS 1207990120 (2005-2006). Data for hemp oil combine HTS 15150904010 (1999-2001) and HTS 15159008010 (2002-present).

Three forms of seed are imported:<sup>13</sup> (1) *de-hulled seed*, often referred to as hemp hearts, hulled seeds, or hemp nut, used in a range of food products; (2) *non-viable whole seed*, rendered non-viable through a sterilization process, usually through temperature exposure; and (3) *viable whole seed*, capable of germination under suitable conditions.

<sup>13</sup> Seed CX, Ltd., “Overview of U.S. Hemp Seed Imports,” 2016.

Purchasing viable seed for germination can be a complicated process. It can be difficult to locate a seed source, since there are no U.S. cultivars, and any seed must be sourced internationally. Also, the grower must submit a DEA 357 import form, and any seed source must be pre-screened by DEA and also meet USDA phytosanitary rules. Once the permit is obtained, a copy of the permit is then sent to the seed supplier and may be shipped by air freight.<sup>14</sup> Other requirements include entry approval and ground transport to field sites and field site security.

Most hemp seed cultivars originate in the EU (mostly from France, Germany, Hungary, Italy, Poland, and Romania), Russia, Ukraine, and China.

## **U.S. Market Potential**

Most researchers acknowledge the potential profitability of industrial hemp, but also the potential obstacles to its development. Current challenges facing the industry include the need to re-establish agricultural supply chains, breed varieties with modern attributes, upgrade harvesting equipment, modernize processing and manufacturing, and identify new opportunities.<sup>15</sup>

In the past two decades, researchers at the USDA and various land grant universities and state agencies (for example, Arkansas, Kentucky, Maine, Minnesota, North Dakota, Oregon, and Vermont; see **Appendix A**) have conducted several feasibility and marketing studies.

Studies by researchers in Canada and various state agencies provide a mostly positive market outlook for growing hemp, citing rising consumer demand and the potential range of product uses for hemp. Some state reports claim that if current restrictions on growing hemp in the United States were removed, agricultural producers in their states could benefit. A 2008 study reported that acreage under cultivation in Canada, “while still showing significant annual fluctuations, is now regarded as being on a strong upward trend.” Most studies generally note that hemp “has such a diversity of possible uses, [and] is being promoted by extremely enthusiastic market developers.” Other studies highlight certain production advantages associated with hemp or acknowledge hemp’s benefits as a rotational crop or further claim that hemp may be less environmentally degrading than other agricultural crops. Other studies claim certain production advantages to hemp growers, such as relatively low input and management requirements.

Other studies differ from the various state reports and provide a less favorable aggregate view of the potential market for hemp growers in the United States, highlighting challenges facing U.S. growers. For example, a 2000 study by USDA projected that U.S. hemp markets “are, and will likely remain, small, thin markets.” It also cited “uncertainty about long-run demand for hemp products and the potential for oversupply” among possible downsides of potential future hemp production. Similarly, a study by University of Wisconsin-Madison concluded that hemp production “is not likely to generate sizeable profits,” and, although hemp may be “slightly more profitable than traditional row crops,” it is likely “less profitable than other specialty crops” due to the “current state of harvesting and processing technologies, which are quite labor intensive, and result in relatively high per unit costs.”<sup>16</sup> The study also noted that U.S. growers could be affected by competition from other world producers and by production limitations in the United States, including yield variability and lack of harvesting innovations and processing facilities, as well as difficulty transporting bulk hemp. The study further claimed that most estimates of

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<sup>14</sup> NC-FAR Capitol Hill seminar, April 29, 2016 (“Purdue University Industrial Hemp Initiative”).

<sup>15</sup> *Ibid.*

<sup>16</sup> T. R. Fortenbery and M. Bennett, “Opportunities for Commercial Hemp Production,” *Review of Agricultural Economics*, vol. 26, no. 1 (2004), pp. 97-117.

profitability from hemp production are highly speculative and often do not include additional costs of growing hemp in a regulated market, such as the cost associated with “licensing, monitoring, and verification of commercial hemp.”

A 2013 study by researchers at the University of Kentucky predicted that despite “showing some positive returns, under current market conditions, it remained unclear whether anticipated hemp returns would be large enough to entice Kentucky grain growers to shift out of grain production” under most circumstances. They also noted that “short run employment opportunities evolving from a new Kentucky hemp industry appear limited (perhaps dozens of new jobs, not 100s),” because of continued uncertainty in the industry.<sup>17</sup> Overall, the study concluded that there were many remaining unknowns and that further analysis and production research was needed.

Given the absence since the 1950s of any commercial and unrestricted hemp production in the United States, it is not possible to predict the potential market and employment effects of relaxing current restrictions on U.S. hemp production. While expanded market opportunities might exist in some states or localities if current restrictions on production are lifted, it is not possible to predict the potential for future retail sales or employment gains in the United States, either nationally or within certain states or regions. Little information is available from previous market analyses that have been conducted by researchers at USDA and land grant universities and state agencies.

## Global Production

### International Production

Approximately 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp. Aggregated production data from the United Nations do not include all countries (most notably Canada) and may differ from other sources but comprise the most readily available source of information. Based on these data, worldwide acreage in hemp cultivation—both hemp seed and hemp tow waste—is reported at about 175,000 acres (**Error! Reference source not found.**), growing by less than 375 million pounds annually (**Error! Reference source not found.**).<sup>18</sup> Reported global production is highly variable year to year, and totaled about 375 million pounds in 2014.

The U.N. data do not include Canada, which is a major hemp producing and exporting country. Canada is also major supplier of U.S. hemp imports, particularly of hemp-based foods and food ingredients and other related imported products.

### Global Production (Excluding Canada)

Leading global hemp producers include China, South Korea, Russia, and Europe. Some countries never outlawed production; other countries banned production for certain periods in the past and later lifted these restrictions. Hemp production across these countries and regions account for nearly all the reported production and acreage reported in the U.N. database.

China is the world’s single largest hemp producing and exporting country, mostly of hemp textiles and related products, as well as a major supplier of these products to the United States. China

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<sup>17</sup> University of Kentucky, *Considerations for Growing Industrial Hemp: Implications for Kentucky’s Farmers and Agricultural Economy*, July 2013.

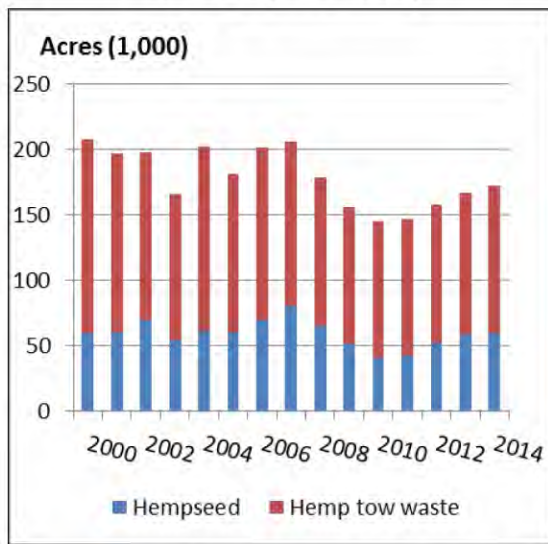
<sup>18</sup> Food and Agriculture Organization of the United Nations, FAOSTAT crop data, <http://faostat.fao.org/en>. Does not include all producing countries, including Canada. Data are self-reported.

reportedly produced nearly 80 million pounds on about 30,000 acres, accounting for about one-fifth of global production.<sup>19</sup>

Total production across all European countries is reported at nearly 250 million pounds on more than 70,000 acres, accounting for about two-thirds of the U.N.-reported global production. Most of this production is in Western Europe. The European Union (EU) has an active hemp market, with production in most member nations. Production is centered in France, the Netherlands, Lithuania, and Romania.<sup>20</sup> Many EU countries lifted their bans on hemp production in the 1990s and, until recently, also subsidized the production of “flax and hemp” under the EU’s Common Agricultural Policy.<sup>21</sup> Most EU production is of hurds, seeds, and fibers. Other non-EU European countries with reported hemp production include Russia, Ukraine, and Switzerland.

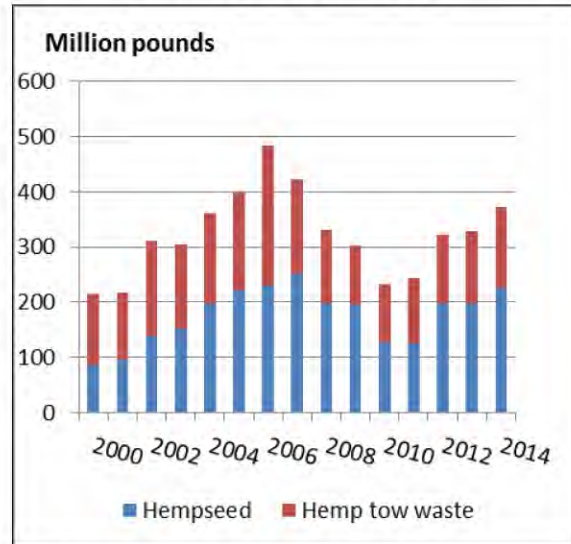
Other countries with active hemp grower and/or consumer markets are Australia, New Zealand, India, Japan, Korea, Turkey, Egypt, Chile, and Thailand.<sup>22</sup>

**Figure 3. Hemp Fiber and Seed, Global Acreage (2000-2015)**



Source: FAOSTAT, <http://www.fao.org/faostat/en/>.

**Figure 4. Hemp Fiber and Seed, Global Production (2000-2015)**



Source: FAOSTAT, <http://www.fao.org/faostat/en/>.

### Production in Canada

Canada’s commercial hemp industry is fairly new: Canada began to issue licenses for research crops in 1994, followed by commercial licenses starting in 1998. Since hemp cultivation was legalized in Canada, production has been variable year to year (**Error! Reference source not found.**), ranging from a high of 48,000 acres planted in 2006 to about 4,000 acres in 2001-2002 to

<sup>19</sup> Ibid.

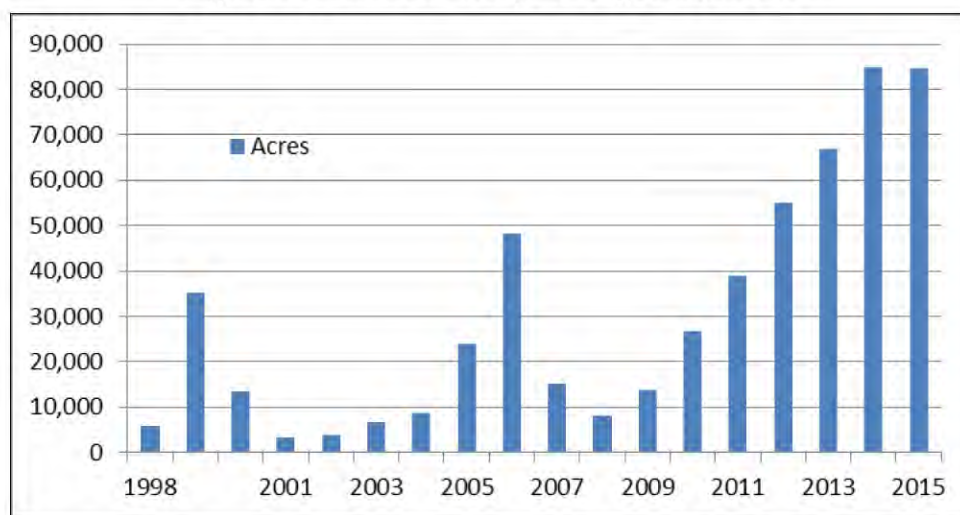
<sup>20</sup> European Hemp Industry Association, “The European Hemp Industry,” May 2016. Other producing countries include Austria, Denmark, Finland, Germany, Italy, Poland, Portugal, Slovenia, and Spain.

<sup>21</sup> For information on the EU’s prior agricultural support for industrial hemp, see the EU’s notification to the World Trade Organization regarding its domestic support for agricultural producers (G/AG/N/EEC/68; January 24, 2011).

<sup>22</sup> For a list of countries, see National Hemp Association, “Countries Where Hemp Is Grown,” <http://nationalhempassociation.org/countries-where-hemp-is-grown/>.

a reported nearly 39,000 acres in 2011. However, in the past few years, acreage in hemp cultivation and production has risen sharply—now at about 90,000 acres—which some attribute to increased import demand in the United States.<sup>23</sup> Canada’s hemp cultivation still accounts for only about 1% of the country’s available farmland. Previously, the number of cultivation licenses has also varied from year to year, reaching a high of 560 licenses in 2006, followed by a low of 77 licenses in 2008 and rising to 340 licenses in 2011.<sup>24</sup> Since then, the number of licenses has risen sharply to a reported 1,135 licenses issued in 2015. Annual retail sales of all Canadian-derived hemp seed products are estimated between \$20 million to \$40 million, and the number of businesses active in the sector has grown sharply over the past few years.<sup>25</sup>

**Figure 5. Canadian Hemp Acreage, 1998-2015**



**Source:** CRS from Agriculture and Agri-Food Canada data, “Industrial Hemp Statistics,” <http://www.hc-sc.gc.ca/hc-ps/substancontrol/hemp-chanvre/about-apropos/stat/index-eng.php>, and “Industrial Hemp Production in Canada,” [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/econ9631](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/econ9631).

**Note:** The downturn in 2007 is viewed as a correction of overproduction in 2006 following the “success of the court case against the DEA in 2004, and continued improvements in breeding, production, and processing,” which resulted in part in a “dramatic reduction in hemp acreage planted” in 2007. The 2007 downturn is also attributed to “increasingly positive economics of growing other crops” (Manitoba Agriculture, National Industrial Hemp Strategy, March 2008, prepared for Food and Rural Initiative Agriculture and Agri-Food Canada).

The development of Canada’s hemp market followed a 60-year prohibition and is strictly regulated.<sup>26</sup> The Office of Controlled Substances of Health Canada, which issues licenses for all activities involving hemp administers the program. Under the regulation, all industrial hemp grown, processed, and sold in Canada may contain THC levels of no more than 0.3% of the weight of leaves and flowering parts. Canada has also set a maximum level of 10 parts per million for THC residues in products derived from hemp grain, such as flour and oil.<sup>27</sup> To obtain a license to grow hemp, Canadian farmers must submit extensive documentation, including background criminal record checks, the Global Positioning System (GPS) coordinates of their fields, and

<sup>23</sup> See, for example, Canadian Hemp Trade Alliance, “Grow Hemp,” <http://www.hemptrade.ca/grow-hemp>.

<sup>24</sup> Health Canada statistics, <http://www.hc-sc.gc.ca/index-eng.php>.

<sup>25</sup> See, for example, Canadian Hemp Trade Alliance, “Grow Hemp.”

<sup>26</sup> Industrial Hemp Regulations (SOR/98-156), as part of the Controlled Drugs and Substances Act.

<sup>27</sup> Agriculture Canada, “Canada’s Industrial Hemp Industry,” March 2007, <http://www4.agr.gc.ca>.

supporting documents (from the Canadian Seed Growers’ Association or the Canadian Food Inspection Agency) regarding their use of certified low-THC hemp seeds and approved cultivars; and they must allow government testing of their crop for THC levels.<sup>28</sup>

In 2016, Canada further relaxed its regulations of industrial hemp production by amending its drug laws to provide for a “class exemption” for hemp in order to “simplify the license application process for the 2017 growing season.”<sup>29</sup> According to Health Canada, the Section 56 Class Exemption “better aligns regulation of industrial hemp with the demonstrated low public health and safety risks of the crop” intended “to simplify the license application process” as Canada moves forward with “its commitment to legalize, strictly regulate, and restrict access to marijuana.”<sup>30</sup> Among the types of simplifications and streamlining are:

- Reduced pre-requisite requirements (e.g., no longer need to pre-identify planting sites, no more minimum acreage requirements);
- Reduced paperwork (to a single form), reduced proof requirements (to a single attestation), and growers may now apply electronically;
- THC testing requirements mostly eliminated (except for pedigreed seed or applications to be added to the list of approved cultivars);
- License expiry date extended until March the following year; and
- Criminal record check valid now for one year.

The potential impact could greatly facilitate hemp production for Canadian farmers, which could continue to give them an advantage over U.S. growers, where hemp production remains restricted and legal in only few cases.

## U.S. Production

Following enactment of the 2014 farm bill, hemp cultivation is now allowed under certain circumstances by research institutions and state departments of agriculture. However, official estimates of U.S. hemp production are not available. Based on limited available information, U.S. hemp production is estimated at nearly 13,000 acres in 2015 by at least 650 registered or licensed growers across select states (**Table 2**). A reported 30 universities are conducting hemp research nationwide.<sup>31</sup> Cultivation is beginning to attract investment in hemp processing facilities, such as in Kentucky, where a reported 36 processors have been approved for operation.<sup>32</sup>

**Table 2. Industrial Hemp Crop Report, United States, 2015**

State	Number Registered Growers/Licenses	Number Production Acres	Purposes Grown
Colorado	372	8,975	fiber, grain, seed for sale, cannabidiol (CBD)

<sup>28</sup> See Health Canada’s FAQs on its hemp regulations and its application for obtaining permits (<http://www.hc-sc.gc.ca/>). Other information is at the Canadian Food Inspection Agency website (<http://www.inspection.gc.ca/>).

<sup>29</sup> Canadian Hemp Trade Alliance, “Health Canada Issues an Interim Class Exemption for Hemp,” press release[?], November 22, 2016.

<sup>30</sup> Ibid. See also Health Canada, “Notice to Industry” and “Section 56 Class Exemption in Relation to the Industrial Hemp Regulations,” November 2016.

<sup>31</sup> Estimates according to Vote Hemp.

<sup>32</sup> See A. Crawford, “Kentucky’s Industrial Hemp Program Expanding in Third Year,” [wkms.org](http://wkms.org), February 18, 2016.

State	Number Registered Growers/Licenses	Number Production Acres	Purposes Grown
Hawaii	1	<1	N/A
Indiana	1	4	N/A
Kentucky	137	2,500	fiber, grain, seed for sale, CBD
Maine	2	0.1	unknown
Minnesota	7	35	fiber, grain, CBD (non-medical)
Montana	15-20	N/A	N/A
Nevada	13	250	fiber, grain, CBD
New York	1	N/A	cover crop
North Dakota	5	70	grain
Oregon	11	50	N/A
Tennessee	41	700	CBD
Vermont	28	175	CBD research
Virginia	3	20-25	fiber, grain research
West Virginia	8	10	fiber, grain
<b>Total</b>	<b>650</b>	<b>12,795</b>	

**Source:** CRS from information from Colorado Department of Agriculture, “2016 National Hemp Regulatory Meeting Survey,” October 2016; HIA, “National Hemp Update,” May 2016; J. Anderson, “Opportunities Take Root for Hemp Farmers,” *HempBiz Journal*, no. 1 (2016); and various news sources.

Hemp was widely grown in the United States from the colonial period into the mid-1800s. Fine and coarse fabrics, twine, and paper from hemp were in common use. By the 1890s, labor-saving machinery for harvesting cotton made the latter more competitive as a source of fabric for clothing, and the demand for coarse natural fibers was met increasingly by imports. Industrial hemp was handled in the same way as any other farm commodity in that USDA compiled statistics and published crop reports<sup>33</sup> and provided assistance to farmers promoting production and distribution.<sup>34</sup> In the early 1900s, hemp continued to be grown, and USDA researchers continued to publish information related to hemp production and also reported on hemp’s potential for use in textiles and in paper manufacturing.<sup>35</sup> Several hemp advocacy groups, including HIA and Vote Hemp, Inc., have compiled other historical information and have copies of original source documents.<sup>36</sup>

Between 1914 and 1933, in an effort to stem the use of *Cannabis* flowers and leaves for their psychotropic effects, 33 states passed laws restricting legal production to medicinal and industrial purposes only.<sup>37</sup> The 1937 Marihuana Tax Act defined hemp as a narcotic drug, requiring that

<sup>33</sup> See, for example, editions of USDA *Agricultural Statistics*. A compilation of U.S. government publications is available at <http://www.hempology.org/ALLARTICLES.html>.

<sup>34</sup> See, for example, USDA’s 1942 short film “Hemp for Victory” and University of Wisconsin’s Extension Service Special Circular, “What About Growing Hemp,” November 1942.

<sup>35</sup> Regarding papermaking, see L. H. Dewey and J. L. Merrill, “Hemp Hurds as Paper-Making Material,” USDA Bulletin No. 404, October 14, 1916.

<sup>36</sup> See links at <http://www.thehia.org/History>.

<sup>37</sup> R. J. Bonnie and C. H. Whitebread, *The Marihuana Conviction: A History of Marihuana Prohibition in the United* (continued...)

farmers growing hemp hold a federal registration and special tax stamp, effectively limiting further production expansion.

In 1943, U.S. hemp production reached more than 150 million pounds (140.7 million pounds hemp fiber; 10.7 million pound hemp seed) on 146,200 harvested acres. This compared to pre-war production levels of about 1 million pounds. After reaching a peak in 1943, production started to decline. By 1948, production had dropped back to 3 million pounds on 2,800 harvested acres, with no recorded production after the late 1950s.<sup>38</sup>

## Federal Law and Requirements

### Controlled Substances Act of 1970

In 1937, Congress passed the first federal law to discourage cannabis production for marijuana while still permitting industrial uses of the crop (the Marihuana Tax Act; 50 Stat. 551). Under this statute, the government actively encouraged farmers to grow hemp for fiber and oil during World War II. After the war, competition from synthetic fibers, the Marihuana Tax Act, and increasing public anti-drug sentiment resulted in fewer and fewer acres of hemp being planted and none at all after 1958. The Controlled Substances Act of 1970 (CSA, 21 U.S.C. §801 *et. seq.*) placed the control of select plants, drugs, and chemical substances under federal jurisdiction and was enacted, in part, to replace previous federal drug laws with a single comprehensive statute.<sup>39</sup>

The CSA adopted the same definition of *Cannabis sativa* that appeared in the 1937 Marihuana Tax Act. The definition of “marihuana” (21 U.S.C. §802(16)) reads:

The term marihuana means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound ... or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

The statute thus retains control over all varieties of the cannabis plant by virtue of including them under the term *marijuana* and does not distinguish between low- and high-THC varieties. The language exempts from control the parts of mature plants—stalks, fiber, oil, cake, etc.—intended for industrial uses. Some have argued that the CSA definition exempts industrial hemp under its term exclusions for stalks, fiber, oil, cake, and seeds.<sup>40</sup> DEA refutes this interpretation.<sup>41</sup>

Strictly speaking, the CSA does not make growing hemp illegal; rather, it places strict controls on the production of hemp, making it illegal to grow the crop without a DEA permit.

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(...continued)

*States* (Charlottesville: University Press of Virginia, 1974), p. 51.

<sup>38</sup> USDA *Agricultural Statistics*, various years through 1949. A summary of data spanning 1931-1945 is available in the 1946 edition. See “Table 391—Hemp Fiber and Hempseed: Acreage, Yield, and Production, United States.”

<sup>39</sup> CSA was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513). For more information, see CRS Report R43749, *Drug Enforcement in the United States: History, Policy, and Trends*.

<sup>40</sup> See, for example, *Hemp Industries Association v. Drug Enforcement Administration*, 357 F.2d (9<sup>th</sup> Circuit 2004).

<sup>41</sup> 66 *Federal Register* 51530, October 9, 2001.



## Agricultural Act of 2014

The 113<sup>th</sup> Congress considered various changes to U.S. policies regarding industrial hemp during the omnibus farm bill debate.<sup>42</sup> The 2014 farm bill<sup>43</sup> provides that certain “institutions of higher education”<sup>44</sup> and state departments of agriculture may grow industrial hemp, as part of an agricultural pilot program, if allowed under state laws where the institution or state department of agriculture is located. The farm bill also established a statutory definition of *industrial hemp* as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” The provision was included as part of the research title of the law. The provision did not include an effective date that would suggest any kind of program rollout, and there appears to be nothing in the conference report or bill language to suggest that the states might not be able to immediately initiate action on this provision.

This provision was adopted when Representatives Polis, Massie, and Blumenauer introduced an amendment to the House version of the farm bill (H.R. 1947, the Federal Agriculture Reform and Risk Management Act of 2013) during floor debate on the bill. The amendment (H.Amdt. 208) was to allow institutions of higher education to grow or cultivate industrial hemp for the purpose of agricultural or academic research and applied to states that already permit industrial hemp growth and cultivation under state law. The amendment was adopted by the House of Representatives. Although the full House ultimately voted to reject H.R. 1947, similar language was included as part of a subsequent revised version of the House bill (H.R. 2642), which was passed by the full House.

In the Senate, Senators Wyden, McConnell, Paul, and Merkley introduced an amendment to the Senate version of the farm bill (S. 954, the Agriculture Reform, Food and Jobs Act of 2013). The amendment (S.Amdt. 952) would have amended the CSA to exclude industrial hemp from the definition of marijuana. The amendment was not adopted as part of the Senate-passed farm bill.

During conference on the House and Senate bills, the House provision was adopted with additional changes. The enacted law expands the House bill provision to allow both certain research institutions and also state departments of agriculture to grow industrial hemp, as part of an agricultural pilot program, if allowed under state laws where the institution or state department of agriculture is located.

As the farm bill did not include an effective date distinct from the date of enactment, several states responded by making immediate plans to initiate new hemp pilot projects. In addition, several states enacted legislation to allow for hemp cultivation, which is a precondition for allowances under the 2014 farm bill.

Some have speculated whether the industrial hemp provision in the 2014 farm bill could terminate, expire, or require reauthorization in a subsequent farm bill.<sup>45</sup> Although some individual authorizations in the farm bill specifically have provisions indicating that they expire in 2018 (such as authorized funding levels), the industrial hemp research provision in the 2014 farm bill does not have such language. Furthermore, the farm bill does not contain a default sunset

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<sup>42</sup> For farm bill information, see CRS Report R43076, *The 2014 Farm Bill (P.L. 113-79): Summary and Side-by-Side*.

<sup>43</sup> P.L. 113-79, §7606 (7 U.S.C. 5940).

<sup>44</sup> Although not defined in the 2014 farm bill, the joint statement defines “institutions of higher education” according to the Higher Education Act of 1965, Section 101 of (20 U.S.C. §1001).

<sup>45</sup> See, for example, comments made during a National Agricultural Law Center webinar, “Production of Industrial Hemp in the U.S.: Overview, Status, and Legal Issue,” October 13, 2015.

provision for all its authorizations. Accordingly, the industrial hemp research provision in the 2014 farm bill appears to be intended to have some degree of permanence.

## **Selected Appropriations Actions**

In response to DEA actions to block seeds imported by some states in order to grow industrial hemp and to avoid future similar DEA actions to stall full implementation of the hemp provision of the farm bill, Congress acted swiftly. Both the House and Senate FY2015 Commerce-Justice-Science (CJS) appropriations bills contained provisions to block federal law enforcement authorities from interfering with state agencies and hemp growers and counter efforts to obstruct agricultural research. The enacted FY2015 appropriation blocked federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research.<sup>46</sup> The provision stated that “none of the funds made available” to the U.S. Justice Department and DEA “may be used in contravention” of the 2014 farm bill.

Similar language was contained in the enacted FY2016 Consolidated Appropriations Act, wherein Congress blocked DEA and other federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research.<sup>47</sup> In addition, USDA was also blocked from prohibiting the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with the 2014 farm bill provision.<sup>48</sup> Legislation debating the FY2017 budget also contained similar restrictions.<sup>49</sup>

During both the FY2015 and FY2016 appropriations debates, the House CJS bills also included provisions that no funds be used to prevent a state from implementing its own state laws that “authorize the use, distribution, possession, or cultivation of industrial hemp” as defined in the 2014 farm bill.<sup>50</sup> These provisions were not adopted.

In addition, as part of the FY2017 appropriations debate, the Senate committee report urged USDA “to clarify the Agency’s authority to award Federal funds to research projects deemed compliant with Section 7606 of the Agricultural Act of 2014.”<sup>51</sup> The latter provision addresses questions by a number of state and private research institutions about the extent to which industrial hemp initiatives might be eligible for U.S. federal grant programs (both USDA and non-USDA program funds). Previously, in November 2015, several Members of Congress sent a letter to USDA requesting clarification of the agency’s research funds for industrial hemp.<sup>52</sup>

## **State Laws**

Since the mid-1990s, there has been a resurgence of interest in the United States in producing industrial hemp. Farmers in regions of the country that are highly dependent upon a single crop, such as tobacco or wheat, have shown interest in hemp’s potential as a high-value alternative crop, although the economic studies conducted so far paint a mixed profitability picture. Beginning around 1995, an increasing number of state legislatures began to consider a variety of

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<sup>46</sup> P.L. 113-235, Division B, §539.

<sup>47</sup> P.L. 114-113, Division B, §543.

<sup>48</sup> P.L. 114-113, Division A, §763.

<sup>49</sup> See, for example, S. 2956, §722 (114<sup>th</sup> Congress).

<sup>50</sup> H.R. 4660, §557 (113<sup>th</sup> Congress); H.R. 2578, §557 (114<sup>th</sup> Congress).

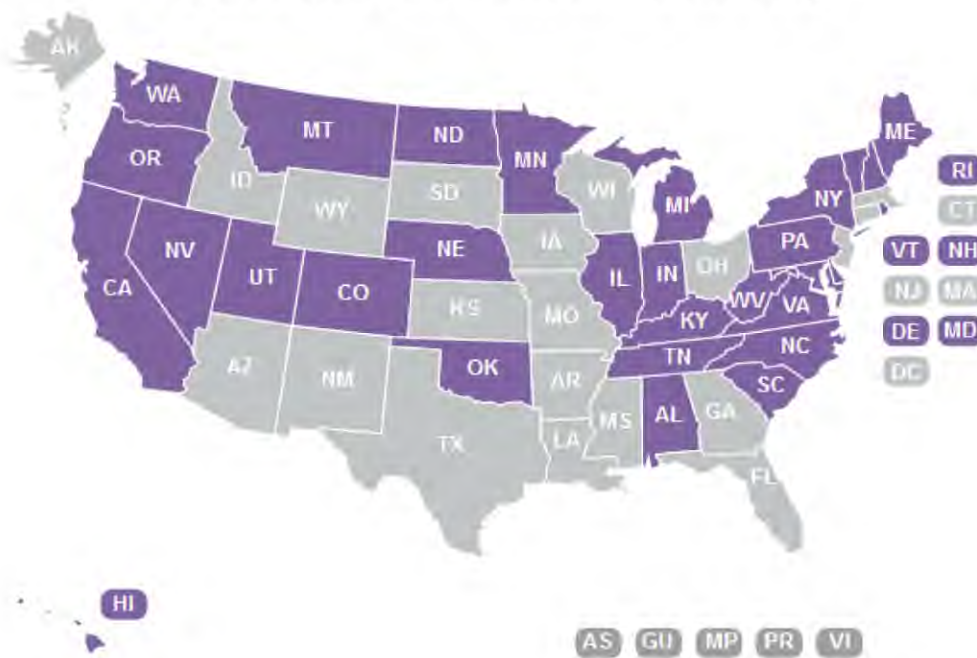
<sup>51</sup> H.Rept. 114-259.

<sup>52</sup> Letter to USDA Secretary Tom Vilsack signed by 37 Representatives and 12 Senators, November 20, 2015.

initiatives related to industrial hemp. Most of these have been resolutions calling for scientific, economic, or environmental studies, and some are laws authorizing planting experimental plots under state statutes. Nonetheless, the actual planting of hemp, even for state-authorized experimental purposes, remains regulated by DEA under the CSA.

Following enactment of the 2014 farm bill provision allowing for growing hemp under certain circumstances, several states have quickly been adopting new state laws to allow for cultivation. To date, more than 30 states or territories have enacted or introduced legislation favorable to hemp cultivation (**Figure 6**). Other states reportedly considering hemp legislation include Alaska, Arizona, Florida, Georgia, Iowa, Kansas, Massachusetts, Mississippi, New Mexico, South Dakota, Texas, and Wisconsin.<sup>53</sup> (The status of state actions regarding hemp is changing rapidly, and information differs depending on source.<sup>54</sup>)

**Figure 6. State Laws Related to Industrial Hemp**



**Source:** National Conference of State Legislatures, State Industrial Hemp Statutes (<http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx>).

**Notes:** Darker shade indicates “allows cultivation of hemp for commercial, research or pilot programs.” Non-shaded states indicate “does not allow cultivation of hemp.”

Requirements differ among the states, and some states—Illinois, Indiana, Kentucky, Maine, Nebraska, New Hampshire, Virginia—have enacted laws that are considered more comprehensive than others.<sup>55</sup>

Some common provisions across these state laws include:<sup>56</sup>

<sup>53</sup> Information from National Hemp Association at <http://nationalhempassociation.org/>.

<sup>54</sup> Resources for updated information include the National Conference of State Legislatures (NCSL), “State Industrial Hemp Statutes,” and the advocacy group Vote Hemp.

<sup>55</sup> National Agricultural Law Center, “Production of Industrial Hemp in the U.S.”

- defining industrial hemp (based on the percentage of THC it contains) and excluding industrial hemp from the definition of “controlled substances” under state law;
- authorizing the growing and possessing of industrial hemp by creating an advisory board or commission;
- establishing or authorizing a state licensing or registration program for growers and/or seed breeders;
- requiring recordkeeping;
- requiring waivers or changes to federal law;
- establishing or authorizing fee structures;
- establishing inspection procedures;
- allowing state departments to collect funds for research programs;
- promoting research and development of markets for industrial hemp;
- establishing certified seed requirements<sup>57</sup> or, in some states, “heritage hemp seeds” (e.g., in Colorado and Kentucky); and
- establishing penalties.

Some states have well-developed guidelines for growers, covering issues such as registration and reporting requirements, inspection, THC testing and threshold determination, seed availability and certification, pesticide use, production standards, and other information. Other general requirements may apply under some circumstances. For example, in 2016, USDA published guidance on organic certification of industrial hemp products.<sup>58</sup> Some are calling for the need to develop more far-reaching consensus standards for a range of cannabis varieties given concerns about the general lack of standards and test methods.<sup>59</sup> Production of industrial hemp has been reported in several states (**Table 2**).

Among the states that have enacted taxation and/or fees for industrial hemp are California, Colorado, Indiana, Kentucky, Maine, Montana, Nevada, North Dakota, Oregon, Tennessee, Vermont, and West Virginia.<sup>60</sup>

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<sup>56</sup> Ibid.; NCSL, state industrial hemp statutes.

<sup>57</sup> Certified seed varieties are those proven to produce mature hemp plants with a THC below 0.3% in variety test plots across a range of climatic conditions. See, for example, Colorado Department of Agriculture, “Industrial Hemp: An Emerging Agricultural Crop in Colorado,” February 2, 2016; and Oregon State University, Oregon Seed Certification Service, “Certification Standards: Industrial Hemp (*Cannabis sativa* L.),” December 2014. Seed certification standards and procedures are generally based on national standards adopted for industrial hemp by the Association of Official Seed Certifying Agencies (AOSCA) and follow state guidelines for all other agricultural crops.

<sup>58</sup> USDA, “Instruction: Organic Certification of Industrial Hemp Production,” NOP 2040, August 23, 2016.

<sup>59</sup> J. Murphy, “ASTM International Says Interest Is Growing for Cannabis Quality Standards,” *Food Chemical News*, July 29, 2016. ASTM International is a voluntary standards developing organization.

<sup>60</sup> Based on information collected in September 2015 provided by state analyst Brittany Dement.

## DEA Policy Statements and Guidance

### DEA Permit Requirements

Federal law prohibits cultivation without a permit. DEA determines whether any industrial hemp production authorized under a state statute is permitted, and it enforces standards governing the security conditions under which the crop must be grown. In other words, a grower needs to get permission from DEA to grow hemp or faces the possibility of federal charges or property confiscation, regardless of whether the grower has a state-issued permit.<sup>61</sup>

Although many states have established programs under which a farmer may be able to grow industrial hemp under certain circumstances, a grower would still need to obtain a DEA permit and abide by DEA's strict production controls. This relationship has resulted in some high-profile cases, wherein growers have applied for a permit but DEA has not approved (or denied) a permit to grow hemp, even in states that authorize cultivation under state laws.

In the past there has been ongoing tension between federal and state authorities over state hemp policies. After North Dakota passed its own state law authorizing industrial hemp production in 1999,<sup>62</sup> researchers repeatedly applied for, but did not receive, a DEA permit to cultivate hemp for research purposes in the state.<sup>63</sup> Also in 2007, two North Dakota farmers were granted state hemp farming licenses and, in June 2007, filed a lawsuit in U.S. District Court (North Dakota) seeking “a declaratory judgment” that the CSA “does not prohibit their cultivation of industrial hemp pursuant to their state licenses.”<sup>64</sup> The case was dismissed in November 2007.<sup>65</sup> The case was appealed to the U.S. Court of Appeals (Eighth Circuit) but was again dismissed in December 2009.<sup>66</sup> The farmers filed an appeal in May 2010.<sup>67</sup>

Even if DEA approves a permit, production might be discouraged because of the perceived difficulties of working through DEA licensing requirements and installing the types of structures necessary to obtain a permit. Obtaining a DEA permit to produce hemp requires that the applicant demonstrate that an effective security protocol will be in place at the production site, such as security fencing around the planting area, a 24-hour monitoring system, controlled access, and possibly armed guards to prevent public access.<sup>68</sup> DEA application requirements also include a nonrefundable fee, FBI background checks, and extensive documentation. It could also be argued that the necessary time-consuming steps involved in obtaining and operating under a DEA permit, the additional management and production costs from installing structures, and other business and regulatory requirements could ultimately limit the operation's profitability.

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<sup>61</sup> Registration requirements are at 21 C.F.R. 823. DEA's registration procedures and applications are at <http://www.deadiversion.usdoj.gov/drugreg/process.htm>.

<sup>62</sup> The North Dakota Department of Agriculture issued final regulations in 2007 on licensing hemp production.

<sup>63</sup> See, for example, letter from North Dakota State University to DEA, July 27, 2007.

<sup>64</sup> David Monson and Wayne Hauge v. Drug Enforcement Administration and United States Department of Justice, Complaint for Declaratory Judgment, U.S. District Court for the District of North Dakota, June 18, 2007.

<sup>65</sup> Monson v. DEA, 522 F. Supp. 2d 1188 (D.N.D. 2007).

<sup>66</sup> Monson v. DEA, 589 F.3d 952 (8<sup>th</sup> Cir. 2009).

<sup>67</sup> S. Roesler, “ND Farmers File another Industrial Hemp Appeal in District Court,” *Farm & Ranch Guide*, June 4, 2010.

<sup>68</sup> University of Kentucky Cooperative Extension Service, “Industrial Hemp—Legal Issues,” September 2012.

There is little information about DEA's permit process and on facilities that are licensed to grow hemp, even for research purposes. Previously reports indicated that DEA had issued a permit for an experimental quarter-acre plot at the Hawaii Industrial Hemp Research Program during the period from 1999 to 2003 (now expired).<sup>69</sup> Most reports indicate that DEA continues to be reluctant to grant licenses to grow hemp, even for research purposes.<sup>70</sup> Recent indications are that some land grant university researchers may have been granted licenses to conduct hemp research under certain conditions.<sup>71</sup>

In recent years, U.S. producers have begun to grow hemp under state law (**Table 2**). Some are foregoing the requirement to obtain a federal permit. For example, in 2009, Montana's Agriculture Department issued its first state license for an industrial hemp-growing operation in the state, and media reports indicated that the grower did not intend to request a federal permit.<sup>72</sup> Such cases continue to pose a challenge to DEA of whether it is willing to override the state's authority to allow for hemp production in the state. It is also a test of states' rights.

## Other Early DEA Policies Regarding Industrial Hemp

DEA documentation illustrates how DEA has reviewed inquiries about the legal status of hemp-based products, including inquiries from U.S. Customs inspectors regarding the need for guidance regarding imported hemp products:<sup>73</sup>

DEA took the position that it would follow the plain language of the Controlled Substances Act (CSA), which expressly states that anything that contains "any quantity" of marijuana or THC is a schedule I controlled substance. However, as a reasonable accommodation, DEA exempted from control legitimate industrial products that contained THC but were not intended for human consumption (such as clothing, paper, and animal feed).

DEA's position that "anything that contains 'any quantity' of marijuana or THC" should be regarded as a controlled substance is further supported by reports published by the National Institute on Drug Abuse, which is part of the National Institutes of Health. Although it does not have a formal position about industrial hemp, its research tends to conflate all cannabis varieties, including marijuana and hemp. For example, it reports: "All forms of marijuana are mind-altering (psychoactive)," and "they all contain THC (delta-9-tetrahydrocannabinol), the main active chemical in marijuana."<sup>74</sup> DEA further maintains that the CSA does not differentiate between different varieties of cannabis based on THC content.<sup>75</sup>

Regarding DEA's issuance of its 2003 rules and the import dispute that followed (discussed in the previous report sections), the agency continues to maintain that the courts have expressed conflicting opinions on these issues:

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<sup>69</sup> DEA, "Statement from the Drug Enforcement Administration on the Industrial Use of Hemp," March 12, 1998.

<sup>70</sup> S. Raabe, "First Major Hemp Crop in 60 Years Is Planted in Southeast Colorado," *Denverpost.com*, May 13, 2013.

<sup>71</sup> B. Bakst, "Minnesota to Go Slow on Industrial Hemp Pilot Project, Frustrating Farmers Eager to Grow Crop," *Minneapolis Star Tribune*, August 8, 2015.

<sup>72</sup> M. Brown, "First License Issued to Montana Hemp Grower," *Missoulian*, October 27, 2009.

<sup>73</sup> DEA, "DEA History in Depth," 1999-2003, and other DEA published resources.

<sup>74</sup> National Institute on Drug Abuse, "Marijuana: Facts for Teens," <http://www.drugabuse.gov/publications/marijuana-facts-teens/letter-to-teens>.

<sup>75</sup> DEA, "DEA History in Depth," 1999-2003, and other DEA published resources.

Despite the plain language of the statute supporting DEA's position, the ninth circuit ruled in 2004 that the DEA rules were impermissible under the statute and therefore ordered DEA to refrain from enforcing them. Subsequently, in 2006, another federal court of appeals (the eight circuit) took a different view, stating, as DEA had said in its rules: "The plain language of the CSA states that schedule I(c) includes 'any material ... which contains any quantity of THC' and thus such material is regulated."...<sup>76</sup> Thus, the federal courts have expressed conflicting views regarding the legal status of cannabis derivatives.<sup>77</sup>

Regarding interest among growers in some states to cultivate hemp for industrial use, DEA claims that the courts have supported the agency's current policy that all hemp growers—regardless of whether a state permit has been issued and of the THC content—are subject to the CSA and must obtain a federal permit:

Under the CSA, anyone who seeks to grow marijuana for any purpose must first obtain a DEA registration authorizing such activity. However, several persons have claimed that growing marijuana to produce so-called "hemp" (which purportedly contains a relatively low percentage of THC) is not subject to CSA control and requires no DEA registration. All such claims have thus far failed, as every federal court that has addressed the issue has ruled that any person who seeks to grow any form of marijuana (no matter the THC content or the purpose for which it is grown) must obtain a DEA registration.<sup>78</sup>

Regarding states that have enacted laws legalizing cannabis grown for industrial purposes, "these laws conflict with the CSA, which does not differentiate, for control purposes, between marijuana of relatively low THC content and marijuana of greater THC content."<sup>79</sup>

## Dispute over Hemp Food Imports (1999-2004)

Starting in late 1999, DEA acted administratively to demand that the U.S. Customs Service enforce a zero-tolerance standard for the THC content of all forms of imported hemp—and hemp foods in particular. Development of DEA's rules to support its actions sparked a fierce battle over the permissibility of imported hemp-based food products that lasted from 1999 until 2004.

DEA followed up, in October 2001, with publication of an interpretive rule in the *Federal Register* explaining the basis of its zero-tolerance standard.<sup>80</sup> It held that when Congress wrote the statutory definition of marijuana in 1937, it "exempted certain portions of the *Cannabis* plant from the definition of marijuana based on the assumption (now refuted) that such portions of the plant contain none of the psychoactive component now known as THC."

In March 2003, DEA issued two final rules addressing the legal status of hemp products derived from the cannabis plant. It found that hemp products "often contain the hallucinogenic substance tetrahydrocannabinols (THC) ... the primary psychoactive chemical found in the cannabis (marijuana) plant."<sup>81</sup> Although DEA acknowledged that "in some cases, a Schedule I controlled substance may have a legitimate industrial use," such use would be allowed only under highly

<sup>76</sup> DEA-cited court case: *United States v. White Plume*, 447 F.3d 1067, 1073 (8<sup>th</sup> Cir. 2006).

<sup>77</sup> DEA, "DEA History in Depth," 1999-2003, and other DEA published resources.

<sup>78</sup> *Ibid.* and other DEA published resources. DEA-cited court cases: *New Hampshire Hemp Council, Inc. v. Marshall*, 203 F.3d 1 (1<sup>st</sup> Cir 2000); *United States v. White Plume*, *supra*; *Monson v. DEA*, 522 F.Supp.2d 1188 (D. N.D. 2007), No. 07-3837 (8<sup>th</sup> Cir. 2007).

<sup>79</sup> DEA, "DEA History in Depth," 1999-2003, and other DEA published resources.

<sup>80</sup> 66 *Federal Register* 51530, October 9, 2001.

<sup>81</sup> DEA, "DEA History in Depth," 1999-2003, and other DEA published resources.

controlled circumstances. These rules set forth what products may contain “hemp” and also prohibit “cannabis products containing THC that are intended or used for human consumption (foods and beverages).”

Both the proposed rule (which was published concurrently with the interpretive rule) and the final 2003 rule gave retailers of hemp foods a date after which DEA could seize all such products remaining on shelves. On both rules, hemp trade associations requested and received court-ordered stays blocking enforcement of that provision. DEA’s interpretation made hemp with any THC content subject to enforcement as a controlled substance.

Hemp industry trade groups, retailers, and a major Canadian exporter filed suit against DEA, arguing that congressional intent was to exempt plant parts containing naturally occurring THC at non-psychoactive levels, the same way it exempts poppy seeds containing trace amounts of naturally occurring opiates.<sup>82</sup> Industry groups maintain that (1) naturally occurring THC in the leaves and flowers of cannabis varieties grown for fiber and food is already at below-psychoactive levels (compared with drug varieties); (2) the parts used for food purposes (seeds and oil) contain even less; and (3) after processing, the THC content is at or close to zero. U.S. and Canadian hemp seed and food manufacturers have in place a voluntary program for certifying low, industry-determined standards in hemp-containing foods. Background information on the TestPledge Program is available at <http://www.TestPledge.com>. The intent of the program is to assure that consumption of hemp foods will not interfere with workplace drug testing programs or produce undesirable mental or physical health effects.

On February 6, 2004, the U.S. Court of Appeals for the Ninth Circuit permanently enjoined the enforcement of the final rule.<sup>83</sup> The court stated that “DEA’s definition of ‘THC’ contravenes the unambiguously expressed intent of Congress in the CSA and cannot be upheld.”<sup>84</sup> In late September 2004 the Bush Administration let the final deadline pass without filing an appeal.

## 2013 DEA Guidance Outlined in “Cole Memo”

In August 2013, the Department of Justice (DOJ) updated its federal marijuana enforcement policy following 2012 state ballot initiatives in Washington and Colorado that “legalized, under state law, the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale.”<sup>85</sup> The guidance—commonly referred to as the “Cole memo”—outlines DOJ’s policy, clarifying that “marijuana remains an illegal drug under the Controlled Substances Act and that federal prosecutors will continue to aggressively enforce this statute.” DOJ identified eight enforcement areas that federal prosecutors should prioritize:

1. Preventing the distribution of marijuana to minors,
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels,
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states,

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<sup>82</sup> 21 U.S.C. §802 (19) and (20).

<sup>83</sup> 68 *Federal Register* 14113, March 21, 2003.

<sup>84</sup> *HIA v. DEA*, 357 F.2d (9<sup>th</sup> Circuit 2004).

<sup>85</sup> Letter providing guidance regarding marijuana enforcement from Deputy U.S. Attorney General James Cole to all U.S. States Attorneys, August 29, 2013, <http://www.justice.gov/opa/pr/2013/August/13-opa-974.html>.



4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity,
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana,
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use,
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands, and
8. Preventing marijuana possession or use on federal property.

Although the Cole memo does not specifically address industrial hemp, because DOJ regards all varieties of the cannabis plant as “marijuana” and does not distinguish between low- and high-THC varieties, the August 2013 guidance appears to cover industrial hemp production as well. Accordingly, some are interpreting the guidance as allowing states to proceed to implement their laws regulating and authorizing the cultivation of hemp.<sup>86</sup>

Changes to Colorado’s state laws in November 2012 now allow for industrial hemp cultivation. Industrial hemp was reported as being grown in Colorado in 2013.<sup>87</sup> However, growers and state authorities continue to face a number of challenges implementing Colorado’s law, including sampling, registration and inspection, seed availability and sourcing, disposition of non-complying plants, and law enforcement concerns, as well as production issues such as hemp agronomics, costly equipment, and limited manufacturing capacity, among other grower and processor concerns.<sup>88</sup> There is also general uncertainty about how federal authorities will respond to production in states where state laws allow cultivation.

In November 2012, state authorities in Colorado requested clarification from DOJ about how federal enforcement authorities might respond to its newly enacted laws and forthcoming regulations.<sup>89</sup> Since federal law regards all varieties of the cannabis plant as “marijuana,” many continue to regard DOJ’s August 2013 guidance as also likely applicable to the regulation of industrial hemp.<sup>90</sup> In November 2013, Colorado officials requested further clarification regarding the cultivation of industrial hemp specifically.<sup>91</sup> It is not known whether either federal agency has responded to the state’s requests.

In September 2013, Representative Blumenauer sent a letter to Oregon state officials urging them to implement that state’s hemp laws.<sup>92</sup> In response, DOJ officials in Oregon reiterated that since “‘industrial hemp’ is marijuana, under the CSA, these eight enforcement priorities apply to hemp

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<sup>86</sup> Letter to interested parties from Joe Sandler, counsel for Vote Hemp, November 13, 2013.

<sup>87</sup> S. Raabe, “First Major Hemp Crop in 60 Years Is Planted in Southeast Colorado,” *Denverpost.com*, May 13, 2013; also see E. Hunter, “Industrial Hemp in Colorado,” presentation at the 2013 HIA conference, November 17, 2013.

<sup>88</sup> R. Carleton, “Regulating Industrial Hemp: The Colorado Experience,” presentation at the 2014 National Association of State Department of Agriculture winter meeting, February 3, 2013; and E. Hunter, “Industrial Hemp in Colorado,” presentation at the 2013 HIA conference, November 17, 2013.

<sup>89</sup> Letter from the governor and attorney general of the state of Colorado to Eric Holder Jr., U.S. Attorney General, November 13, 2012.

<sup>90</sup> Letter from Joe Sandler, counsel for Vote Hemp, to interested parties, November 13, 2013.

<sup>91</sup> Letter from the commissioner of the Colorado Department of Agriculture to Tom Vilsack, Secretary of Agriculture, November 13, 2013.

<sup>92</sup> Letter from Representative Earl Blumenauer to Oregon Department of Agriculture and State Board of Agriculture officials, September 17, 2013.

just as they do for all forms of cannabis” and that “federal prosecutors will remain aggressive” when it comes to protecting these eight priorities.<sup>93</sup> They further indicated that they do not intend to interfere with their state’s hemp production so long as it is well-regulated and subject to enforcement.<sup>94</sup> Some regard that correspondence as further indicative of how federal authorities might respond to production in states that permit growing and cultivating hemp.<sup>95</sup>

## DEA’s Blocking of Imported Viable Hemp Seeds

In response to the enactment of the 2014 farm bill provision allowing for the cultivation of industrial hemp by research institutions and state departments of agriculture, several states made immediate plans to initiate new hemp pilot projects.

Kentucky announced plans for several pilot projects through the Kentucky Department of Agriculture. However, in May 2014, U.S. Customs officials blocked the department’s shipment of 250 pounds of imported *viable* hemp seed from Italy at Louisville International Airport. DEA officials contend that the action was warranted since the “importation of cannabis seeds continues to be subject to the Controlled Substances Import and Export Act (CSIEA)”<sup>96</sup> and to the implementing regulations, which restrict persons from importing *viable* cannabis seed unless they are registered with DEA and have obtained the necessary Schedule I research permit, among other requirements.

Viable seeds are seeds that are alive and have the potential to germinate and develop into normal reproductively mature plants, under appropriate growing conditions. DEA has required that seeds be either heat sterilized or steam sterilized to remove any naturally occurring traces of THC, which makes the seeds mostly incapable of germination. DEA regulates the importation, sterilization, and commercial distribution of hemp seed pursuant to CSIEA.<sup>97</sup>

To facilitate release of the hemp seeds, the Kentucky Department of Agriculture filed a lawsuit in U.S. District Court against DEA, DOJ, U.S. Customs and Border Protection, and the U.S. Attorney General.<sup>98</sup> In the lawsuit, the department contends that its efforts to grow industrial hemp are authorized under both state and federal law and that DEA should not seek to impose “additional requirements, restrictions, and prohibitions” on hemp production beyond requirements in the 2014 farm bill or otherwise interfere with its delivery of hemp seeds.

Although Kentucky’s seeds were eventually released and planted, these circumstances have resulted in uncertainty for U.S. hemp growers. Some in the industry claim that DEA continues to initiate policy changes intentionally to block hemp cultivation.<sup>99</sup> In response, Congress enacted additional legislation to stop DEA from “Selected Appropriations Actions”.

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<sup>93</sup> Letter from S. Amanda Marshall, U.S. Attorney, District of Oregon, to Representative Earl Blumenauer, November 7, 2013.

<sup>94</sup> Ibid. See also N. Crombie, “U.S. Rep. Earl Blumenauer Urges Oregon to Implement Industrial Hemp Law,” *The Oregonian*, September 18, 2013.

<sup>95</sup> CRS communication with representatives of Vote Hemp, Inc., January 2014.

<sup>96</sup> 21 U.S.C. §§951-971. Letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, DEA Office of Diversion Control, to Luke Morgan, counsel for Kentucky Department of Agriculture, May 13, 2014.

<sup>97</sup> 21 U.S.C. 951 et seq. and 21 C.F.R. 1311.

<sup>98</sup> *Kentucky Department of Agriculture v. DEA, U.S. Customs and Border Protection, U.S. Justice Department, and Eric Holder* (Western District of Kentucky, Louisville Division), May 2014.

<sup>99</sup> See, for example: J. Beckerman, “The Curious Legal Status of CBD & Industrial Hemp-Derived Cannabinoids,” The Seminar Group webinar, September 13, 2016.

## Dispute Over Hemp Food Shipments

In January 2017, HIA petitioned the U.S. Court of Appeals for the Ninth Circuit to block DEA's implementation of its December final rule on marijuana extracts, which would designate certain hemp-derived nonpsychotropic products, such as cannabidiol (CBD), as a "marihuana extract" subject to the CSA.<sup>100</sup> Then, in February, 2017, HIA again petitioned the court alleging that DEA violated the court's 2004 order (see discussion in "Dispute over Hemp Food Imports (1999-2004)") when it indicated that a North Dakota hemp company would need a DEA registration and would be subject to other requirements before it could ship processed hemp products outside the state, even though these products were in accordance with state law and the 2014 farm bill.<sup>101</sup>

## 2016 Joint "Statement of Principles" on Industrial Hemp

In August 2016, DEA issued three major decisions on marijuana and industrial hemp.<sup>102</sup> Regarding marijuana, DEA announced it was rejecting a petition to reschedule marijuana (affirming its continued status as an illegal Schedule I controlled substance).<sup>103</sup> It also announced certain policy changes regarding authorized marijuana cultivators for research.<sup>104</sup> Regarding industrial hemp, DEA issued a joint statement with USDA and FDA on the principles on industrial hemp.

The three federal agencies acknowledged that the 2014 farm bill provision regarding industrial hemp "left open many questions regarding the continuing application of Federal drug control statutes to the growth, cultivation, manufacture, and distribution of industrial hemp products, as well as the extent to which growth by private parties and sale of industrial hemp products are permissible."<sup>105</sup> The 2014 farm bill also "did not remove industrial hemp from the controlled substances list." Federal law continues to restrict hemp-related activities that were not specifically legalized under the farm bill provision, which did not amend CSA requirements regarding the manufacture and distribution of "drug products" containing controlled substances. The farm bill provision also did not amend the Federal Food, Drug, and Cosmetic Act<sup>106</sup> regarding the approval process for new drug applications.

The joint statement restates the 2014 farm bill's requirement that hemp be grown and cultivated "in accordance with an agricultural pilot program ... established by a State department of agriculture or State agency ... in a State where the production of industrial hemp is otherwise

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<sup>100</sup> HIA; Centuria Natural Foods, Inc.; and RMH Holdings, LLC v. DEA, Petition for Review, January 13, 2017. The DEA final rule is at 81 *Federal Register* 90194, December 14, 2016.

<sup>101</sup> HIA, et al. v. DEA, Nos. 03-71336, 03-71603, February 6, 2017 (9<sup>th</sup> Circuit). For more information, see L. K. Houck and R. vanLaack, "Hemp Industries Association Seeks Contempt Against DEA; Alleges Violation of 2004 Hemp Order," FDA Law Blog, February 20, 2017.

<sup>102</sup> 81 *Federal Register* 156: 53395-53396, August 12, 2016; also DEA/USDA/FDA joint "Statement of Principles on Industrial Hemp," August 2016. For more information, see CRS Legal Sidebar WSLG1667, *DEA Will Not Reschedule Marijuana, But May Expand Number of Growers of Research Marijuana*.

<sup>103</sup> For more information on marijuana's current status and on rescheduling, see CRS Report R43034, *State Legalization of Recreational Marijuana: Selected Legal Issues*, and CRS Legal Sidebar WSLG1423, *The Legal Process to Reschedule Marijuana*.

<sup>104</sup> For other related information, see J. A. Gilbert Jr. and L. K. Houck, "DEA Issues a Trifecta of Significant Marijuana and Industrial Hemp Decisions, Including Rejecting Rescheduling for Legitimate Medical Use," FDA Law Blog, August 12, 2016.

<sup>105</sup> 81 *Federal Register* 53395-53396, August 12, 2016.

<sup>106</sup> 21 U.S.C. §301 et seq.

legal under State law.”<sup>107</sup> It further notes that “state registration and certification of sites used for growing or cultivating industrial hemp” were not addressed in the 2014 farm bill and recommends that “such registration should include the name of the authorized manufacturer, the period of licensure or other time period during which such person is authorized by the State to manufacture industrial hemp, and the location, including Global Positioning System coordinates, where such person is authorized to manufacture industrial hemp.”

Among the noted positive aspects of the joint statement is clarification by the federal agencies about who is able to grow or cultivate industrial hemp as part of a state’s agricultural research pilot program and the applicability of USDA research and other programs to support industrial hemp. Other aspects of the joint statement, however, have raised concerns regarding how the federal agencies view the statutory definition of industrial hemp and also possible restrictions on the sale of industrial hemp products and the importation of viable seeds for growing and cultivation. Each of these is discussed in the following sections.

Many in Congress and in the industry had much anticipated clarification regarding DEA’s position on industrial hemp by, given continued uncertainty despite support for hemp cultivation in the 2014 farm bill. The joint statement provides guidance to “individuals, institutions, and states” on a number of issues pertaining to the growing and cultivation of industrial hemp. While some in Congress and the U.S. hemp industry are encouraged by parts of the joint statement, they have also expressed concerns about other aspects of the joint statement.<sup>108</sup> A summary of these issues is as follows.

- **Clarification regarding who can grow/cultivate hemp.** The joint statement acknowledges that the 2014 farm bill authorized “State departments of agriculture, and persons licensed, registered, or otherwise authorized by them” and “institutions of higher education or persons employed by or under a production contract or lease with them” to grow or cultivate industrial hemp as part of an agricultural pilot program in accordance with the 2014 farm bill. This seemingly clears up confusion regarding the potential participation of private farmers licensed or under contract with authorized state departments of agriculture and institutions of higher learning.
- **Clarification regarding USDA research support for hemp.** The joint statement clarifies that institutions of higher education and other authorized participants “may be able to participate in USDA research or other programs to the extent otherwise eligible for participation in those programs.” This seemingly addresses questions raised in November 2015 by some Members of Congress as part of a letter sent to USDA requesting clarification on the extent to which federal funds may be used to support research on industrial hemp.
- **Confusion regarding the definition of industrial hemp.** Some in the hemp industry worry that the joint statement reinterprets the statutory definition of industrial hemp to cover fiber and seed only, excluding flowering tops, which they believe is covered by the farm bill definition.<sup>109</sup> The flowering heads of the plant have the greatest cannabinoid content. They also worry that the joint

<sup>107</sup> 81 *Federal Register* 53395-53396, August 12, 2016.

<sup>108</sup> Letter from several House and Senate Members of Congress to officials at DEA, USDA, and FDA, October 27, 2016; and HIA press releases, August 15 and August 17, 2016.

<sup>109</sup> See, for example, HIA press releases, August 2016; and J. Beckerman, “The Curious Legal Status of CBD and Industrial Hemp-Derived Cannabinoids,” The Seminar Group webinar, September 13, 2016.

statement expands upon inherent restrictions to the statutory definition in that it broadly highlights the term THC, which is defined to include “all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols,” whereas the statutory definition in the 2014 farm bill specifies delta-9 THC, the dominant psychoactive cannabinoid of cannabis. Some in Congress claim that the executive branch is defining industrial hemp more narrowly than that defined in statute in that it “drops the ‘delta-9’ when describing tetrahydrocannabinol” and “adds isomers, acids, and salts of isomers of THC to count against the 0.3% THC threshold.”<sup>110</sup> These Members of Congress have asked that the definition be removed from the guidance.

- **Confusion regarding possible restrictions on commerce.** Some in Congress note that the 2014 farm bill defined “agricultural pilot program” to mean “a pilot program to study the growth, cultivation, or *marketing* of industrial hemp” (italics added).<sup>111</sup> These Members of Congress have asked for confirmation that “general commercial activity” does not prevent any types of sale from occurring from the framework of an approved pilot program. Likewise, the hemp industry remains concerned about the inclusion of language in the joint statement indicating that “industrial hemp products ... may not be sold in States where such sale is prohibited.”<sup>112</sup> Broadly speaking “industrial hemp products” are already widely marketed, sold, and distributed. Some claim that this restriction on sales is contrary to provisions in both the CSA and the 2014 farm bill.
- **Confusion regarding the transportation and sales of hemp.** The joint statement also emphasizes that “industrial hemp plants and seeds may not be transported across State lines,” and restates DEA’s position that the importation of viable cannabis seeds be carried out by DEA-registered persons, in accordance with CSIEA, seemingly to limit the sale of hemp products only in states with industrial hemp pilot programs. This remains a contentious issue following DEA’s blocking of viable hemp seed in 2014. Some on Congress maintain that federal agencies do not have the authority to limit hemp sales or prohibit the transport of plants or seed under the 2014 farm bill.<sup>113</sup>

The joint statement’s guiding principles are provided in the **Appendix B**.

Additional confusion remains, however, since the joint statement explicitly says it “does not establish any binding legal requirements,” further raising questions about whether guidance in the statement could influence future DEA policies and enforcement action regarding industrial hemp cultivation and marketing.

## Other Federal Agency Actions

In 1994, President Clinton issued Executive Order 12919, “National Defense Industrial Resources Preparedness,” which was intended to strengthen the U.S. industrial and technology base for meeting national defense requirements. The order included hemp among the essential agricultural

<sup>110</sup> Letter from House and Senate Members of Congress to DEA, USDA, and FDA officials, October 27, 2016.

<sup>111</sup> Ibid.

<sup>112</sup> See, for example, HIA press releases, August 2016; and Beckerman, “The Curious Legal Status of CBD.”

<sup>113</sup> Letter from House and Senate Members of Congress to DEA, USDA, and FDA officials, October 27, 2016.

products that should be stocked for defense preparedness purposes.<sup>114</sup> Some hemp supporters have argued that the executive order gives hemp a renewed value as a strategic crop for national security purposes in line with its role in World War II.<sup>115</sup>

USDA has supported research on alternative crops and industrial uses of common commodities since the late 1930s. Some alternative crops have become established in certain parts of the United States—kenaf (for fiber) in Texas, jojoba (for oil) in Arizona and California, and amaranth (for nutritious grain) in the Great Plains states. Many have benefits similar to those ascribed to hemp but are not complicated by having a psychotropic variety within the same species.

The Critical Agricultural Materials Act of 1984 (P.L. 98-284, 7 U.S.C. §178) supports the supplemental and alternative crops provisions of the 1985 and 1990 omnibus farm acts and other authorities and funds research and development on alternative crops at USDA and state laboratories.<sup>116</sup> In addition, Section 1473D of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. §3319d(c)) authorizes USDA to make competitive grants toward the development of new commercial products derived from natural plant material for industrial, medical, and agricultural applications. To date, these authorities have not been used to develop hemp cultivation and use.

The United States is a signatory of the United Nations Single Convention on Narcotic Drugs, 1961.<sup>117</sup> The principal objectives of the convention are to “limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes and to address drug trafficking through international cooperation to deter and discourage drug traffickers.”<sup>118</sup> The convention requires that each party control cannabis cultivation within its borders. However, Article 28.2 of the convention states, “This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.” Thus the convention need not present an impediment to the development of a regulated hemp farming sector in the United States.

## Ongoing Congressional Activity

### Industrial Hemp Farming Act

In the 114<sup>th</sup> Congress, the Industrial Hemp Farming Act of 2015 (Massie/H.R. 525; Wyden/S. 134) is intended to facilitate the possible commercial cultivation of industrial hemp in the United States. The bills would amend Section 102 of the CSA (21 U.S.C. 802(16)) to exclude “industrial hemp” and specify that the term *marijuana* does not include industrial hemp, which the bill would define based on a determination of its THC content (not more than 0.3% THC), marijuana’s primary psychoactive chemical. Such a change could remove low-THC hemp from being covered by the CSA as a controlled substance subject to DEA regulation, thus allowing for industrial hemp to be grown and processed under some state laws. The bill could grant authority to any state permitting industrial hemp production and processing to determine whether any such cannabis

<sup>114</sup> Hemp is included under the category of “food resources,” which is defined to mean, in part, “all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax, fiber and other materials, but not any such material after it loses its identity as an agricultural commodity or product.”

<sup>115</sup> J. B. Kahn, “Hemp ... Why Not?” Berkeley Electronic Press Legal Series, Paper 1930, 2007.

<sup>116</sup> In 2014, funding for the program totaled \$1.1 million, but no funding was requested for subsequent years.

<sup>117</sup> As amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, Article 28.

<sup>118</sup> Information posted on International Narcotics Control Board website.

plants met the limit on THC concentration as set forth in the CSA. In any criminal or civil action or administrative proceeding, the state's determination may be conclusive and binding. The House and Senate bills differ in that S. 134 includes a provision that would allow states to override this determination if the U.S. Attorney General determines that the state law does not "reasonably" comply with the requirements of the proposed CSA amendments. H.R. 525 does not include this language.

The Industrial Hemp Farming Act was first introduced in the 109<sup>th</sup> Congress by former Representative Ron Paul and was reintroduced in subsequent legislative sessions (H.R. 1831, 112<sup>th</sup> Congress; H.R. 1866, 111<sup>th</sup> Congress; H.R. 1009, 110<sup>th</sup> Congress; H.R. 3037, 109<sup>th</sup> Congress). In the 112<sup>th</sup> Congress, Senator Ron Wyden introduced S. 3501 in the Senate.<sup>119</sup> Representative Massie introduced H.R. 525, and Senator Wyden introduced S. 359, in the 113<sup>th</sup> Congress. Some in Congress believe that industrial hemp production could result in economic and employment gains in some states and regions.<sup>120</sup>

## Legislation Regarding Possible Medical Applications of Hemp

Two other bills introduced in the 114<sup>th</sup> Congress would amend CSA "to exclude cannabidiol and cannabidiol-rich plants from the definition of marijuana, and for other purposes." Both bills would also amend the CSA to define a "cannabidiol-rich plant" to mean "the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis" and so would be consistent with the statutory definition for industrial hemp. The two bills are related but are not identical. One way the two bills differ is that the House bill (Charlotte's Web Medical Access Act of 2015, H.R. 1635) would further exclude cannabidiol and cannabidiol-rich plants from being applicable to the Federal Food, Drug, and Cosmetic Act. This provision is not part of the Senate bill (Therapeutic Hemp Medical Access Act of 2015, S. 1333). A similar version of the House bill was introduced in the 113<sup>th</sup> Congress (Charlotte's Web Medical Hemp Act of 2014, H.R. 5226).

Cannabidiol (CBD) is a non-psychoactive compound in *Cannabis* that is low in delta-9 THC.<sup>121</sup> The "Charlotte's Web" reference in the House bill refers to a high-CBD (low THC) *Cannabis* extract that has been sold as a dietary supplement and marketed as helping to address various ailments, including neuropathic pain, epilepsy, post-traumatic stress disorder, nausea as a result of chemotherapy, and other disorders.<sup>122</sup> Most CBD extracts currently being marketed for certain therapeutic purposes are generally formulated from strains of cannabis with THC levels higher than 0.3% but generally less than 1% THC.<sup>123</sup> Some hemp-based CBD products have been

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<sup>119</sup> Previous versions of the bill have differed. Section 3 of the 2009 bill would apply when a state has an industrial hemp regulatory scheme, whereas the 2011 bills would apply whenever state law permits "making industrial hemp," which a state might do by exempting hemp making from its controlled substance regulatory scheme. Section 3 of the 2009 bill would have afforded state officials "exclusive authority" to construe the proposed hemp exclusion from the definition of marijuana (amending 21 U.S.C. §802(16)(B)), whereas the 2011 bills would include within the proposed industrial hemp exclusion (amending 21 U.S.C. §802(57)) any industrial hemp grown or possessed in accordance with state law relating to making industrial hemp.

<sup>120</sup> See, for example, B. Schreiner, "Senate Committee Approves Hemp Legislation," Associated Press, February 11, 2013; also Senate Minority Leader Mitch McConnell, "Industrialized Hemp Will Help Spur Economic Growth and Create Jobs in Kentucky," press release, January 31, 2013.

<sup>121</sup> For more information, see CRS Report R44742, *Defining "Industrial Hemp": A Fact Sheet*.

<sup>122</sup> Named after Charlotte Figi, who suffers from a rare pediatric seizure disorder and has reportedly experienced relief from seizures with this strain of medical marijuana that is high in CBD and low in THC.

<sup>123</sup> CRS communication with Project CBD representatives, September 22, 2014.

marketed as being rich in CBD and as having comparable therapeutic uses to CBD extracts, resulting in the FDA issuing warning letters to several companies.<sup>124</sup>

There is also growing concern that hemp-based CBD products, derived from industrial hemp, are being marketed as being rich in CBD and as having comparable therapeutic uses to CBD extracts. Medicine-grade CBD is not produced or pressed from hemp seeds. Hemp seed oil, marketed as “hemp oil,” is made by pressing hemp seeds that contain low levels of CBD (typically less than 25 parts per million). Most of the CBD extracts currently being marketed for certain therapeutic purposes are generally formulated from strains of cannabis with THC levels higher than 0.3% but generally less than 1% THC.<sup>125</sup> For more information, see CRS In Focus IF10391, *Potential Use of Industrial Hemp in Cannabidiol Products*.

To date, FDA has not approved any drug product containing CBD for any indication and has issued warning letters to several companies that market CBD products to treat health conditions for both humans and pets. According to FDA, these products are not “generally recognized as safe and effective,” and the companies marketing these products are engaging in illegal interstate commerce.<sup>126</sup> FDA has further determined that products containing CBD cannot be sold as dietary supplements and are excluded from the dietary supplement definition in the Federal Food, Drug, and Cosmetic Act.<sup>127</sup> As such, FDA may consult with its federal and state partners about whether to initiate a federal enforcement action against the manufacturers of CBD products that are marketed as dietary supplements.<sup>128</sup> In June 2015, the Senate Caucus on International Narcotics Control held a hearing on the barriers to research and the potential medical benefits of CBD. (Additional information is provided in the **text box** on the next page.)

Many agriculture-based groups continue to advocate for the need for additional research into the possible benefits and uses of industrial hemp-derived CBD.<sup>129</sup> Some states continue to conduct research on the potential uses for industrial hemp-derived CBD.<sup>130</sup>

In February 2017, the National Academies of Sciences published a comprehensive review of existing cannabis research. The study provides a broad set of evidence-based research conclusions on the health effects of cannabis and cannabinoids and provides recommendations to support advancing future research and inform public health decisions.<sup>131</sup>

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<sup>124</sup> FDA, “Warning Letters and Test Results,” <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm435591.htm>.

<sup>125</sup> CRS communication with Project CBD representatives, September 22, 2014.

<sup>126</sup> Comments attributed to FDA, as reported by S. Nelson, “FDA Brings Down Hammer on CBD Companies,” *U.S. News and World Report*, March 11, 2015.

<sup>127</sup> Federal Food, Drug, and Cosmetic Act, §201(ff)(3)(B)(ii). For more information, see FDA, “FDA and Marijuana: Questions and Answers,” September 30, 2015, <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm>.

<sup>128</sup> For more direct assistance on the role of CBD within U.S. drug industry, as regulated by the FDA, contact Erin Bagalman ([ebagalman@crs.loc.gov](mailto:ebagalman@crs.loc.gov), 7-5345) or Lisa N. Sacco ([lsacco@crs.loc.gov](mailto:lsacco@crs.loc.gov), 7-7359).

<sup>129</sup> See, for example, Kentucky Hemp Industries Council, “Industrial Hemp-Derived Cannabidiol (Hemp CBD).”

<sup>130</sup> See, for example, PHYS.org, “Research on Industrial Hemp Continues to Progress,” August 2015. See also “The Kentucky Department of Agriculture Industrial Hemp Pilot Projects—2014 Summary” (includes KDA CBD Project: “This project is focusing on the production of a very specific type of hemp to develop a nutritional supplement containing cannabidiol (CBD) and evaluate its health benefits”).

<sup>131</sup> National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: Current State of Evidence and Recommendations for Research* (Washington, DC: National Academies Press). See also J. E. Joy, S. J. Watson Jr., and J. A. Benson Jr., eds., *Marijuana and Medicine: Assessing the Science Base*, Institute of Medicine, 1999.



### Senate Caucus on International Narcotics Control (June 2015 Hearing)

In June 2015, the Senate Caucus on International Narcotics Control, led by Senators Chuck Grassley and Dianne Feinstein, held a hearing on the barriers to research and the potential medical benefits of CBD.

The caucus leaders claimed many leading medical organizations have called for further research into the potential medical use of CBD. The hearing addressed the complexities involved with conducting CBD research, as well as its potential medical benefits and risks in treating serious illnesses. The hearing provided a follow-up to letters sent by the caucus leaders to DOJ and to the Department of Health and Human Services (HHS) to ask these agencies to evaluate CBD using the appropriate scientific and medical factors to make a scheduling determination for it that is separate from the whole marijuana plant. The caucus anticipates that “[i]f it turns out that CBD may be classified on a lower schedule than the entire marijuana plant, and then research on it may proceed somewhat more easily.”<sup>132</sup> The caucus reported that DOJ and HHS have agreed to undertake this evaluation,<sup>133</sup> representing that “for the first time, the federal government will conduct a comprehensive analysis to determine whether cannabidiol has scientific and medical value.”<sup>134</sup>

**Source:** CRS based on opening statement of Senator Chuck Grassley, chairman, Senate Caucus on International Narcotics Control Committee, June 24, 2015; and Senator Dianne Feinstein, “Feinstein, Grassley Announce New Federal Policy on Cannabidiol Research,” press release, June 23, 2015. See also letter from DOJ to Senator Feinstein, January 5, 2015; letter from HHS to Senator Grassley, May 13, 2015; and letter from DOJ to Senators Grassley and Feinstein, June 23, 2015.

### Congressional Action on USDA Hemp Research Support<sup>135</sup>

In November 2015, several Members of Congress sent a letter to USDA requesting clarification of the agency’s research funds for industrial hemp.<sup>136</sup> This action was in response to questions by a number of state and private research institutions on the extent to which industrial hemp initiatives were eligible for U.S. federal grant awards (both USDA and non-USDA program funds). These questions arose, in part, given mixed messages received by some land grant universities about whether they would qualify for USDA competitive grants to do industrial hemp research and initial indications that they would be denied such support. Some groups feared they could jeopardize eligibility for other grants if they pursued research into industrial hemp.

In late 2015, CRS staff attempted to get further clarification on USDA’s policy regarding industrial hemp and federal grants and loans to support research of industrial hemp with limited success. Information provided from USDA was not always consistent and often conflicting.<sup>137</sup> According to USDA’s National Institute of Food and Agriculture (NIFA), the agency had not awarded any competitive research grants for industrial hemp (as of September 2015).<sup>138</sup> However, subsequent searches of USDA’s Current Research Information System (CRIS) database<sup>139</sup>

<sup>132</sup> Opening statement of Senator Chuck Grassley, Senate Caucus on International Narcotics Control Committee, June 24, 2015.

<sup>133</sup> See, for example, letter from the DOJ to Senator Feinstein, January 5, 2015; and letter from HHS to Senator Grassley, May 13, 2015. See also letter from DOJ to Senators Grassley and Feinstein, June 23, 2015.

<sup>134</sup> Press release by Senator Feinstein, “Feinstein, Grassley Announce New Federal Policy on Cannabidiol Research,” June 23, 2015.

<sup>135</sup> This section was written with contributions from Jim Monke (jmonke@crs.loc.gov; 7-9664), who handles issues regarding USDA’s research programs.

<sup>136</sup> Letter to USDA Secretary Tom Vilsack signed by 37 Representatives and 12 Senators, November 20, 2015.

<sup>137</sup> CRS communications during 2015 with USDA, including the department’s Office of Congressional Relations and program offices with USDA’s National Institute of Food and Agriculture (NIFA) and Rural Development agencies.

<sup>138</sup> CRS communications with USDA, September 2015. NIFA provides funding for programs and grants to researchers and land grant universities that advance agriculture-related sciences. For more information on USDA research programs, see CRS Report R40819, *Agricultural Research: Background and Issues*.

<sup>139</sup> USDA’s searchable CRIS database is at <http://cris.nifa.usda.gov/search.html>.

indicate that NIFA formula-funded grants were used at Colorado State University for 2015 under available Hatch Act funding to study hemp cultivation as part of bigger grants about profitability of alternative agriculture in southern Colorado.<sup>140</sup> Other available information, including correspondence between USDA and various congressional staff, suggests that USDA has no record of any application for industrial hemp research being denied. No additional information is available on whether any such applications had been proposed or would or could be approved.

A USDA memo dating back to December 2014 states that “NIFA supports” grants for industrial hemp research so long as that research meets existing state requirements consistent with the requirements in the 2014 farm bill (P.L. 113-79, §7606; 7 U.S.C. 5940).<sup>141</sup> However, USDA staff indicated that the December 2014 memo pertains only to what the statutory provision authorizes and does not say anything explicitly about federal funding of industrial hemp research.<sup>142</sup> Although this response did not address the underlying issue regarding federal funding, it likely indicates that researchers working on industrial hemp may carry on with this work at least on their own (according to requirements specified in the 2014 farm bill) without threatening their status and working relationship with USDA.

Other communication with USDA’s Rural Development Agency indicated that the agency’s Rural Business-Cooperative Service has initiated conversation with USDA’s Office of the General Counsel to review whether its programs could potentially support the industrial hemp industry.<sup>143</sup> There does not appear to be any legal reason why USDA would not be able to provide grant funding for research activities on industrial hemp within the language of the 2014 farm bill provision, and the question remains about whether USDA will fund such applications in the future. Specifically, clarification is needed regarding whether industrial hemp research projects are eligible for USDA competitive grants (e.g., under USDA’s Agriculture and Food Research Initiative program) and/or for Hatch Act formula funds, as well as clarification about whether hemp producers are eligible for other types of agricultural support from other USDA agencies (such as loans and grants administered by USDA’s Rural Development Agency).

Some have suggested that perhaps industrial hemp might qualify under certain other USDA grant programs, such as NIFA’s Specialty Crop Research Initiative or USDA’s Specialty Crop Block Grant Program. However, industrial hemp is not included among the crops that are considered “specialty crops” and technically would not qualify for any grant specifically designated for specialty crop producers.<sup>144</sup> Other potential programs include the Organic Transitions Integrated Research Program (ORG) and the Value-Added Producer Grant Program.<sup>145</sup>

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<sup>140</sup> Includes (1) “Research and Education to Enhance the Sustainability of Farming in Southwestern Colorado” (COL00615A) and (2) “Field Crop Testing and Management in Southwestern Colorado” (COL00615). The Hatch Act of 1887 provides for multistate research funding to conduct agricultural research programs at State Agricultural Experiment Stations across all 50 states, the District of Columbia, and the territories.

<sup>141</sup> Letter from NIFA director Ramaswamy to Eric Young, executive director of the Southern Association of Agriculture Experiment Station Directors, December 23, 2014.

<sup>142</sup> CRS communications with USDA, October 2015.

<sup>143</sup> CRS communications with USDA, August 2015. USDA’s Rural Development Agency administers both business loans and grants.

<sup>144</sup> “Specialty crops” are defined in statute as “fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture)” (7 U.S.C. §1621 note). Industrial hemp is considered among the “List of Ineligible Commodities” (<http://www.ams.usda.gov/services/grants/scbgp/specialty-crop>).

<sup>145</sup> For more information on these USDA programs, see CRS Report R42771, *Fruits, Vegetables, and Other Specialty Crops: Selected Farm Bill and Federal Programs*

Some constituent groups have also expressed an interest in applying for other non-USDA grants, such as the Small Business Innovation Research program (SBIR) intended to help certain small businesses conduct research and development and is coordinated by the Small Business Administration. CRS has not contacted other federal agencies aside from USDA.

Some of the questions raised by Congress's November 2015 letter were addressed in the 2016 joint statement, but some questions remain, which were again posed in a follow-up letter by several Members of Congress.<sup>146</sup> (For additional discussion, see "2016 Joint "Statement of Principles" on Industrial Hemp".)

## Groups Supporting/Opposing Further Legislation

In addition to industry groups as well as various state commissions and organizations that are actively promoting reintroducing hemp as a commodity crop in the United States, some key agricultural groups also support U.S. policy changes regarding industrial hemp. For example:

- The bipartisan Congressional Cannabis Caucus—launched in February 2017 by Representatives Dana Rohrabacher, Don Young, Earl Blumenauer, and Jared Polis—is focused on policy reforms regarding federal drugs laws and issues regarding legalization in some states.
- The National Farmers Union (NFU) updated its 2013 farm policy regarding hemp to urge the President, Attorney General, and Congress to direct DEA to “reclassify industrial hemp as a non-controlled substance and adopt policy to allow American farmers to grow industrial hemp under state law without affecting eligibility for USDA benefits.”<sup>147</sup> Previously NFU’s policy advocated that DEA “differentiate between industrial hemp and marijuana and adopt policy to allow American farmers to grow industrial hemp under state law without requiring DEA licenses.”<sup>148</sup>
- The National Association of State Departments of Agriculture (NASDA) “supports revisions to the federal rules and regulations authorizing commercial production of industrial hemp” and has urged USDA, DEA, and the Office of National Drug Control Policy to “collaboratively develop and adopt an official definition of industrial hemp that comports with definitions currently used by countries producing hemp.” NASDA also “urges Congress to statutorily distinguish between industrial hemp and marijuana and to direct the DEA to revise its policies to allow USDA to establish a regulatory program that allows the development of domestic industrial hemp production by American farmers and manufacturers.”<sup>149</sup>
- In 2014, the American Farm Bureau Federation, from efforts led by the Indiana Farm Bureau, endorsed a policy to support the “production, processing, commercialization, and utilization of industrial hemp”<sup>150</sup> and reportedly also

<sup>146</sup> Letter from House and Senate Members of Congress to officials at DEA, USDA, and FDA, October 27, 2016.

<sup>147</sup> NFU, “Policy of the National Farmers Union,” March 2-5, 2013.

<sup>148</sup> NFU, “National Farmers Union Adopts New Policy on Industrial Hemp,” March 22, 2010. Also see NFU, “Policy of the National Farmers Union,” enacted by delegates to the 108<sup>th</sup> annual convention, Rapid City, SD, March 14-16, 2010.

<sup>149</sup> NASDA, “New Uses of Agricultural Products,” 2010.

<sup>150</sup> *Agri-Pulse*, “AFBF Delegates Fine Tune Policies on WOTUS, Embrace Hemp,” January 14, 2015.

- passed a policy resolution to oppose the “classification of industrial hemp as a controlled substance.” Previously, in 1995, the Farm Bureau had passed a resolution supporting “research into the viability and economic potential of industrial hemp production in the United States ... [and] further recommend that such research includes planting test plots in the United States using modern agricultural techniques.”<sup>151</sup>
- Regional farmers’ organizations also have policies regarding hemp. For example, the North Dakota Farmers Union, as part of its federal agricultural policy recommendations, has urged “Congress to legalize the production of industrial hemp.”<sup>152</sup> The Rocky Mountain Farmers Union has urged “Congress and the USDA to re-commit and fully fund research into alternative crops and uses for crops” including industrial hemp. Also, they “support the decoupling of industrial hemp from the definition of marijuana” under the CSA and “demand the President and the Attorney General direct the U.S. Drug Enforcement Agency (DEA) to differentiate between industrial hemp and marijuana and adopt a policy to allow American farmers to grow industrial hemp under state law without requiring DEA licenses” to “legalize the production of industrial hemp as an alternative crop for agricultural producers.”<sup>153</sup>
  - The National Grange voted in 2009 to support “research, production, processing and marketing of industrial hemp as a viable agricultural activity.”<sup>154</sup>
  - In California, ongoing efforts to revise the definition of marijuana to exclude “industrial hemp” (SB 566) are supported by the state’s sheriffs’ association.<sup>155</sup> The county farm bureau and two sheriffs’ offices supported previous efforts in 2011 to establish a pilot program to grow industrial hemp in selected counties (although the state’s governor later vetoed the bill, SB 676).<sup>156</sup>
  - North American Industrial Hemp Council—a coalition of farmers, state legislators, former officials, scientists, merchants, entrepreneurs, and environmentalists—filed a petition in June 2016 asking DEA to “remove industrial hemp from the federal drug schedules.”<sup>157</sup>

Despite support by some, other groups continue to oppose policy changes regarding cannabis. For example, the National Alliance for Health and Safety, as part of Drug Watch International, claims that proposals to reintroduce hemp as an agricultural crop are merely a strategy by “the international pro-drug lobby to legalize cannabis and other illicit substances.”<sup>158</sup> The California Narcotic Officers’ Association claims that allowing for industrial hemp production would

<sup>151</sup> See, for example, J. Patton, “American Farm Bureau Calls for End to Federal Ban on Hemp Production,” *Lexington Herald-Leader*, January 22, 2014; and *Lane Report*, “Farm Bureau Passes Policy Urging Removal of Industrial Hemp Classification as Controlled Substance,” January 22, 2014.

<sup>152</sup> North Dakota Farmers Union, “2010 Program of Policy and Action,” p. 8.

<sup>153</sup> Rocky Mountain Farmers Union, “Policy 2010,” pp. 6, 15-16, 24.

<sup>154</sup> National Grange, “Legislative Policies” and “Hemp Policy.”

<sup>155</sup> Letter from the California State Sheriffs’ Association to Chairwoman Cathleen Galgiani of the State Senate Agriculture Committee, March 21, 2013.

<sup>156</sup> Letters of support for SB 678 to California State Senator Mark Leno from the Imperial County Farm Bureau (June 16, 2011), Office of Sheriff, Kings County (July 19, 2011), and Office of Sheriff, Kern County (July 21, 2011).

<sup>157</sup> North American Industrial Hemp Council, “Petition to Legalize Industrial Hemp,” June 12, 2016.

<sup>158</sup> See, for example, Drug Watch International, “Position Statement on Hemp (*Cannabis sativa* L.),” November 2002.

undermine state and federal enforcement efforts to regulate marijuana production, since, they claim, the two crops are not distinguishable through ground or aerial surveillance but would require costly and time-consuming lab work to be conducted.<sup>159</sup> This group also claims that these similarities would create an incentive to use hemp crops to mask illicit marijuana production, since marijuana is such a lucrative cash crop.<sup>160</sup> Concerns about the potential linkages to the growing and use of illegal drugs are also expressed by some parent and community organizations, such as the Drug Free America Foundation and PRIDE.<sup>161</sup>

Given DEA's current policy positions and perceived DEA opposition to changing its current policies because of concerns over how to allow for hemp production without undermining the agency's drug enforcement efforts and regulation of the production and distribution of marijuana, hemp proponents say that further policy changes regarding industrial hemp are likely not forthcoming absent congressional legislative action.

## **Concluding Remarks**

Hemp production in the United States faces a number of obstacles in the foreseeable future, such as U.S. government drug policies and DEA concerns about the ramifications of U.S. commercial hemp production. These concerns are that commercial cultivation could increase the likelihood of covert production of high-THC marijuana, significantly complicating DEA's surveillance and enforcement activities and sending the wrong message to the American public concerning the government's position on drugs. DEA officials and a variety of other observers also express the concern that efforts to legalize hemp—as well as those to legalize medical marijuana—are a front for individuals and organizations whose real aim is to see marijuana decriminalized.

Hemp production in the United States also faces competition from other global suppliers. The world market for hemp products remains relatively small, and China, as the world's largest hemp fiber and seed producer, has had and likely will continue to have major influence on market prices and thus on the year-to-year profits of producers and processors in other countries. Canada's lead start in the North American market for hemp seed and oil would also likely affect the profitability of a start-up industry in the United States.

Nevertheless, the U.S. market for hemp-based products has a highly dedicated and growing demand base, as indicated by recent U.S. market and import data for hemp products and ingredients, as well as market trends for some natural foods and body care products. Given the existence of these small-scale, but profitable, niche markets for a wide array of industrial and consumer products, commercial hemp industry in the United States could provide opportunities as an economically viable alternative crop for some U.S. growers.

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<sup>159</sup> Letter from the California Narcotic Officers' Association to Governor Arnold Schwarzenegger, September 18, 2007.

<sup>160</sup> CRS conversation with John Coleman, former DEA official, August 22, 2011.

<sup>161</sup> Information provided to CRS by Jeanette McDougal, National Alliance for Health and Safety, August 22, 2011.

## Appendix A. Listing of Selected Hemp Studies

Below is a listing of reports and studies, ranked by date (beginning with the most recent).

- L. Lane et al., *Industrial Hemp: Legal, Political/Social and Economic Issues Raised Over Time*, University of Arkansas and National Agricultural Law Center, 2016.
- University of Kentucky, *Economic Considerations for Growing Industrial Hemp: Implications for Kentucky's Farmers and Agricultural Economy*, July 2013.
- C. A. Kolosov, "Regulation of Industrial Hemp Under the Controlled Substances Act" *UCLA Law Review*, vol. 57, no. 237 (October 2009).
- Manitoba Agriculture, *National Industrial Hemp Strategy*, March 2008 (prepared for Food and Rural Initiative Agriculture and Agri-Food Canada).
- Reason Foundation, "Illegally Green: Environmental Costs of Hemp Prohibition," Policy Study 367, March 2008, <http://www.reason.org/ps367.pdf>.
- Agriculture and Agri-Food Canada, *Canada's Industrial Hemp Industry*, March 2007, [http://www.agr.gc.ca/misb/spcrops/sc-cs\\_e.php?page+hemp-chanvre](http://www.agr.gc.ca/misb/spcrops/sc-cs_e.php?page+hemp-chanvre).
- Maine Agricultural Center, *An Assessment of Industrial Hemp Production in Maine*, January 2007.
- N. Cherrett et al., "Ecological Footprint and Water Analysis of Cotton, Hemp and Polyester," Stockholm Environment Institute, 2005.
- T. R. Fortenbery and M. Bennett, "Opportunities for Commercial Hemp Production," *Applied Economics Perspectives and Policy*, vol. 26, no. 1 (2004), pp. 97-117, 2004.
- E. Small and D. Marcus, "Hemp: A New Crop with New Uses for North America," *Trends in New Crops and New Uses*, 2002.
- T. R. Fortenbery and M. Bennett, "Is Industrial Hemp Worth Further Study in the U.S.? A Survey of the Literature," Staff Paper No. 443, July 2001.
- J. Bowyer, "Industrial Hemp (*Cannabis sativa* L.) as a Papermaking Raw Material in Minnesota: Technical, Economic and Environmental Considerations," Department of Wood and Paper Science Report Series, May 2001.
- K. Hill, N. Boshard-Blackey, and J. Simson, "Legislative Research Shop: Hemp," University of Vermont, April 2000.
- USDA, Economic Research Service, *Industrial Hemp in the United States: Status and Market Potential*, AGES001E, January 2000.
- M. J. Cochran, T. E. Windham, and B. Moore, "Feasibility of Industrial Hemp Production in Arkansas," University of Arkansas, SP102000, May 2000.
- D. G. Kraenzel et al., "Industrial Hemp as an Alternative Crop in North Dakota," North Dakota State University, AER 402, July 1998.
- E. C. Thompson et al., *Economic Impact of Industrial Hemp in Kentucky*, University of Kentucky, July 1998.
- D. T. Ehrensing, *Feasibility of Industrial Hemp Production in the United States Pacific Northwest*, Oregon State University, SB 681, May 1998.

## **Appendix B. Joint DEA/USDA/FDA “Statement of Principles on Industrial Hemp”**

As noted in the joint DEA/USDA/FDA “Statement of Principles on Industrial Hemp,” published August 12, 2016, which is excerpted below:

USDA, having consulted with and received concurrence from the U.S. Drug Enforcement Administration (DEA) and the U.S. Food and Drug Administration (FDA), therefore, is issuing this statement of principles to inform the public regarding how Federal law applies to activities involving industrial hemp so that individuals, institutions, and States that wish to participate in industrial hemp agricultural pilot programs can do so in accordance with Federal law.

The growth and cultivation of industrial hemp may only take place in accordance with an agricultural pilot program to study the growth, cultivation, or marketing of industrial hemp established by a State department of agriculture or State agency responsible for agriculture in a State where the production of industrial hemp is otherwise legal under State law.

The State agricultural pilot program must provide for State registration and certification of sites used for growing or cultivating industrial hemp. Although registration and certification is not further defined, it is recommended that such registration should include the name of the authorized manufacturer, the period of licensure or other time period during which such person is authorized by the State to manufacture industrial hemp, and the location, including Global Positioning System coordinates, where such person is authorized to manufacture industrial hemp.

Only State departments of agriculture, and persons licensed, registered, or otherwise authorized by them to conduct research under an agricultural pilot program in accordance with section 7606, and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)), or persons employed by or under a production contract or lease with them to conduct such research, may grow or cultivate industrial hemp as part of the agricultural pilot program.

The term “industrial hemp” includes the plant *Cannabis sativa* L. and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis. The term “tetrahydrocannabinols” includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols.

For purposes of marketing research by institutions of higher education or State departments of agriculture (including distribution of marketing materials), but not for the purpose of general commercial activity, industrial hemp products may be sold in a State with an agricultural pilot program or among States with agricultural pilot programs but may not be sold in States where such sale is prohibited. Industrial hemp plants and seeds may not be transported across State lines.

Section 7606 specifically authorized certain entities to “grow or cultivate” industrial hemp but did not eliminate the requirement under the Controlled Substances Import and Export Act that the importation of viable cannabis seeds must be carried out by persons registered with the DEA to do so. In addition, any USDA phytosanitary requirements that normally would apply to the importation of plant material will apply to the importation of industrial hemp seed.

Section 7606 did not amend the Federal Food, Drug, and Cosmetic Act. For example, section 7606 did not alter the approval process for new drug applications, the

requirements for the conduct of clinical or nonclinical research, the oversight of marketing claims, or any other authorities of the FDA as they are set forth in that Act.

The Federal Government does not construe section 7606 to alter the requirements of the Controlled Substances Act (CSA) that apply to the manufacture, distribution, and dispensing of drug products containing controlled substances. Manufacturers, distributors, dispensers of drug products derived from cannabis plants, as well as those conducting research with such drug products, must continue to adhere to the CSA requirements.

Institutions of higher education and other participants authorized to carry out agricultural pilot programs under section 7606 may be able to participate in USDA research or other programs to the extent otherwise eligible for participation in those programs.

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