Growing and processing industrial hemp in the United States became federally legal again as a result of Section 7606 of the Agricultural Act of 2014, titled, “Legitimacy of Industrial Hemp Research”. The Agricultural Act of 2014 is commonly called the 2014 Farm Bill and is codified as U.S.C. Section 5940, henceforth referred to as the Farm Bill. The Farm Bill allowed institutions of higher education and state departments of agriculture to grow industrial hemp for the purpose of research under an agricultural pilot program or other agricultural or academic research if such activities are allowed under the laws of the state.

The Farm Bill provided definitions to two critical terms, agricultural pilot program and industrial hemp. “The term ‘agricultural pilot program’ means a pilot program to study the growth, cultivation, or marketing of industrial hemp...”. Additionally, the law defined “The term ‘industrial hemp’ means 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.” Under this definition, industrial hemp was still a schedule I controlled substance under the definition of “marihuana” in the Controlled Substances Act (CSA: 21 U.S.C. 801 et seq.). Work began immediately in several U.S. states investigating allowable facets of hemp production and utilization under the new Farm Bill.

The U.S. Congress considers new Agricultural Acts (Farm Bills) on a 4-year cycle. Hence, the next consideration was in 2018. While the 2018 bill did not pass until very late in the year, it contained new language affecting hemp production and utilization in the U.S. Specifically, the bill contained language known as the Hemp Farming Act forwarded by Senate Majority Leader Mitch McConnell (R-KY) and supported by many including Representative James Comer (R-KY). The bill passed with the hemp language unaffected and was signed into law on 20 Dec 2018.

The 2018 Farm Bill changed the definition of industrial hemp by legalizing the derivatives from the plant, and also explicitly removed hemp from the definition of marihuana under the CSA, and doesn’t include the word “industrial”. Hence, hemp (as defined in the 2018 Farm Bill) is no longer a schedule I controlled substance under U.S. law. We note that on a federal level, marijuana (also written marihuana) remains a schedule 1 controlled substance under the CSA. This is true despite several states legalizing either the recreational and/or medical uses of marijuana.

The 2018 Farm Bill also directly provided for state regulation of industrial hemp production and processing activities under specific guidelines within the Bill. Even with these specific guidelines, the regulation of industrial hemp as an agricultural crop involves many unique challenges. Both industrial hemp and marijuana are Cannabis sativa L. The only legal difference between the two, according to federal law, is the measured concentration of THC. Industrial hemp and marijuana plants cannot be distinguished by physical differences. Neither the 2014 nor 2018 Farm Bills specified exactly how or when the delta-9 tetrahydrocannabinol (THC) is to be measured. Each state growing and processing industrial hemp is operating under different state laws, regulations, and policies. There are a great number of details to consider including: timing of the sample collection, portion of the plant to collect, analytical methods, and measurement of the delta-9 THC content pre- or post-decarboxylation. The 2018 Farm Bill did provide one additional stipulation regarding the testing by specifying that a state plan shall include “a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced”. But, the general lack of clarity in federal requirements for sampling and testing has led to many differences among state programs, many of which still exist at this writing. There are even a few U.S. states that still consider hemp and its derivatives illegal. Conversely, there are also differences among states in the legal definition of hemp. Most states have adopted the 0.3% THC definition provided in federal law, but some states have different definitions up to 1% THC. This greatly complicates interstate commerce with hemp products.