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# A Growing Market: Smokable Hemp

## Description

The 2018 federal Farm Bill changed hemp's status by removing it from the controlled substances list, and established that hemp was to be treated like an agricultural commodity, sold in interstate commerce to be used as a raw material to make a wide range of products. Many of those products have become familiar to consumers: CBD oils, lotions, ointments, and even foods, plus of course hemp-derived clothes, "plastic," and other materials.

But while the boom based on hemp as raw material for a variety of products was expected following its change in federal status, few anticipated that the change would also lead to a booming market for unrefined hemp flower as a "smokable." While hemp and THC cannabis are both the same species, *Cannabis sativa L.*, hemp is selectively bred specifically for its *low THC* content. Thus, few foresaw that there would be a market for smoking and vaping cannabis that does not get anyone "high." The popularity of smokable hemp is even more surprising when considering the increasingly widespread availability of recreational cannabis with *high THC* content.

There is little doubt, though, that interest in smoking hemp is increasing. It has already become increasingly particularly popular in Europe as a non-intoxicating alternative to tobacco, and likewise has a growing market in the United States. Some research suggests that the smokable hemp market may actually outpace the other segments of the CBD market, growing from just under \$12 million in 2018 to over \$70 million last year, a phenomenal growth rate of well over 500% year-over-year.

Why do consumers partake of smokable hemp? Some suggest it's simply a recreational way of consuming CBD and other cannabinoids (similar to the CBD products commonly sold now) without the psychoactive effects of THC, which of course makes it attractive to people who want to use it during activities in which they don't want or can't have those psychoactive effects. Some combine the hemp flower with a psychoactive THC flower for a milder effect. Others prefer the availability of "certified organic" hemp. Certified organic products must meet strict regulations, such as each ingredient in the final product being organic. Because many of the oils, lotions and other CBD products are produced by extraction processes that include mixing with other, non-organic ingredients, organic certification of such products can be difficult. Unlike most THC cannabis products available today, hemp remains largely farmed outdoors. As is the case with fine wine, the terrain, climate, and post-harvest handling of hemp flower each help determine the overall quality and pricing of the end product.

In many states, the relationship of hemp flower and the law remains complicated. While generally, so long as the product is lawfully manufactured in its home state, it can be shipped direct to a consumer via online sales, the variety of state laws governing sale and use remain somewhat opaque. In Massachusetts, for example, hemp plants and their parts, including flowers, can be sold – but only to licensed growers or processors, while the sale of unprocessed raw plant material to consumers is prohibited. In Rhode Island, the Hemp Growth Act and its regulations allow licensed growers to produce and licensed handlers to process hemp, but there remains uncertainty regarding smokable hemp products. Adding further confusion, on Sept. 25, 2019, Rhode Island's Governor Gina Raimondo issued an executive order banning flavored vapor products. According to the Rhode Island Department of Health (RHDOH), that ban also applied to flavored CBD-labeled products as well, and it is unclear whether the ban impacts the sale of hemp flower or hemp vapor products.

Going forward, Rhode Island faces a decision on hemp: the Hemp Growth Act was enacted in 2016 under the 2014 Farm Bill. Rhode Island has not yet submitted a hemp cultivation plan to the USDA, meaning that the state's program will have to cease operating by November 1, 2020 when the 2014 Farm Bill expires. Rhode Island producers will need to obtain a license directly from USDA in order to continue operating if the state does not have an approved plan by that date.

Partridge Snow & Hahn's [Cannabis Advisory Practice Blog](#) provides updates on marijuana law and policy, covering some of the risks and opportunities in the industry, and makes recommendations regarding best practices. If you are interested in receiving these updates via email, please email us at [marketing@psh.com](mailto:marketing@psh.com).

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