American Seed Innovation & Growth Alliance

ASIGA.ORG

Issue Brief: Section 781's Seed Exclusion

Threatens America's Seed Industry, Hemp Farmers, and Innovation

May 2026

Buried in the FY2026 Agriculture Appropriations Act, signed into law November 12, 2025 and coming into effect on November 12, 2026, is a provision that quietly redefines how cannabis seed is regulated under federal law. Section 781(1)(C)(i) would, in an unprecedented manner, disrupt the U.S. hemp seed supply chain by classifying seeds as a federally controlled substance based on the THC content of the parent plant, regardless of the chemistry of the seed itself. The provision is unnecessary to accomplish the stated purpose of Section 781, which separately restricts intoxicating cannabinoid products through targeted product-level limits. The seed provision would unnecessarily hamstring American farmers, researchers, breeders, small businesses, and medical patients by criminalizing seeds, ceding the global hemp cannabis genetics market to international competitors.

The provision regulates seed by lineage and traceback, not chemistry and subjects seeds to DEA jurisdiction.

Section 781(1)(C)(i) excludes from the federal hemp definition "any viable seeds from a *Cannabis sativa* L. plant that exceeds a total tetrahydrocannabinols concentration (including tetrahydrocannabinolic acid) of 0.3 percent in the plant on a dry weight basis," with the result that seeds would be controlled substances (mandating seed destruction and DEA penalties). For the first time in U.S. hemp law, a material's legal status is determined not by what it is, but by where it came from. Cannabis seeds do not produce THC — cannabinoid biosynthesis is localized exclusively to glandular trichomes, tissues that seeds do not contain. Yet under Section 781(1)(C)(i), even though a seed tests below the 0.3% total THC threshold, it can be criminalized and classified as a DEA Schedule I controlled substance because of the parent plant's chemistry. No other agricultural commodity in active U.S. commerce is regulated this way. No federal regulation evaluates wheat seed by the alcohol content of the beer it could be brewed into; no federal regulation evaluates corn seed by the aflatoxin level of its parent field. Section 781(1)(C)(i) breaks from this established principle without precedent.

The compliance standard cannot be met.

The statute is too vague for USDA's successful implementation. The statute requires traceback from the seed to the parent plant, and the parent plant must in turn be tested and shown to be below 0.3% THC by dry weight (as a living plant, testing is dependent on field location, temperature, days to harvest, etc., and is virtually impossible to enforce as part of a traceback system). A full traceback system would require, at a minimum, significant new regulations and appropriations for USDA. In addition, jurisdiction would be shared with DEA, which would have a role enforcing penalties and managing destruction of criminalized seeds, requiring new funding for DEA.

Implementation of the statute would result in the loss of U.S. seed banks and genetic material passed down for centuries. For germplasm already in lawful possession on the effective date, parental THC history cannot be reconstructed at any cost — the parent plant no longer exists to be tested. No regulation USDA could issue can supply a compliance pathway for material already in lawful commerce. Without congressional action, a seed bank or research institution that lawfully holds tens of thousands of seeds on November 12, 2026 becomes subject to the Schedule I framework.

The provision harms patients, veterans, and Americans.

Implementation of the provision would restrict access by patients, veterans, and Americans to the genetics needed for home and state-licensed cultivation. As of 2024, 47 states, the District of Columbia, and three territories allow medical cannabis use. Approximately 25 jurisdictions authorize home cultivation, where registered patients reproduce specific cultivars from seed to maintain consistency of cannabinoid and terpene profile — including CBD:THC ratios used in seizure management and low-THC, high-CBG cultivars used in inflammatory and neuropathic pain management. Section 781(1)(C)(i) withdraws the federally compliant pathway by which seed for those cultivars moves interstate, at the same moment that federal rescheduling under AG Order No. 6754-2026 expands medical recognition. Veterans accessing alternative therapies, patients treating seizure conditions, and Americans using cannabis for chronic pain and sleep lose access to the specific genetics on which their stabilized care depends. Implementation of the provision would interfere with state laws, federal laws, and the direction of policy to provide access for patients to needed inputs for home cultivation.

The provision cedes the global cannabis genetics market to foreign competitors and ends U.S. interstate commerce.

No global trade competitor's jurisdiction regulates and criminalizes cannabis seed by parental plant THC traceability. At a time when other countries are opening up their seed markets and deregulating to obtain competitive advantage, the U.S. would impose a compliance burden no major trading partner imposes, hobbling our U.S. dominance. At the same time, the provision would balkanize our own U.S. market among 50 states, ending interstate commerce when a domestic market is needed. Federal law governs interstate commerce, and Section 781 will make seeds federally illegal scheduled products — based on a vague, unenforceable standard — thus chilling interstate commerce in seeds. Without a national market, investment in seed innovation and commercialization will be severely set back.

The economic stakes are real and growing.

Hemp grown specifically for seed production was valued at $41.5 million in 2021 (USDA NASS, 2022), contracted sharply in 2023 to $2.9M, and has since rebounded — reaching $16.9 million in 2024 and $49.7 million in 2025, surpassing the 2021 peak (USDA NASS National Hemp Report, April 2026). Total U.S. industrial hemp production value reached $739 million in 2025.

Classification of seed as a controlled substance has deep-reaching negative impacts for small rural businesses, investments, financial institutions, credit card processing, and banking services. American breeders are well-positioned to lead the global cannabis genetics market. Section 781(1)(C)(i) hands that opportunity to international competitors at precisely the moment when U.S. operators are scaling to compete. The overarching result would be unnecessary job loss through misguided and excessive regulation.

Congress should act before the November 12, 2026 deadline.

ASIGA's **proffered remedy is to strike Section 781(1)(C)(i) in its entirety**. Seeds are already covered by the base hemp definition under the 2018 Farm Bill — if a seed tests at or below 0.3% THC, it is hemp under federal law. Section 781(1)(C)(i) is not needed to accomplish Section 781's stated purpose; Sections 781(1)(C)(ii) through (iv) already restrict intoxicating products directly by regulating the final consumer product. Congress must take urgent action to protect America's seed future for growth and innovation.