

UPDATED: THE DELTA-8 THC LOOPHOLE

Nov 11, 2021

Update:

Since the posting of this blog, Drug Enforcement Administration officials have made comments suggesting that delta-8 THC is not a federally controlled substance. As of November 11, 2021, the DEA has yet to issue a binding opinion.

Under the Agricultural Improvement Act of 2018 (the “2018 Farm Bill”), cannabis products derived from hemp are federally legal to sell and use. “Hemp” is defined in the 2018 Farm Bill as the cannabis plant containing no more than .3% Delta-9 THC. Delta-9 THC is a cannabis compound that produces the “high” effect commonly associated with cannabis use. However, a less well known cannabis compound, which can be found in plants falling under the federal definition of “hemp,” is gaining notoriety for its ability to produce what its proponents consider, “legal weed”. Delta-8 THC is derived from CBD extracted hemp plants and has been found to provide a “high” distinct from that experienced from Delta-9, while still falling under the 2018 Farm Bill’s definition of “hemp.” While the Drug Enforcement Administration (the “DEA”) has not made a binding determination of the federal legality of products containing Delta-8 THC, in the DEA’s recently released “Orange Book,” Delta-8 THC is listed as another name for Tetrahydrocannabinols, which is listed as a Schedule I controlled substance under the federal Controlled Substances Act. This recent development seems to run afoul of the Controlled Substances Act’s definition of Tetrahydrocannabinols which “does not include any material, compound, mixture, or preparation that falls within the definition of hemp” set forth in the 2018 Farm Bill. In other words, while Delta-8 is “another name” for Tetrahydrocannabinols, its presence in any quantity in federally legal hemp plants provides a risky grey area for brave cannabis producers to work—and profit—within. Fifteen states have already implemented restrictions on Delta-8 THC products and other states are taking steps to follow suit.

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