



## Delta-8: Is it Legal?

For our state-by state comparison, [click here](#).

In 2018, an amendment to the 2018 Farm Bill legalized hemp and removed the hemp plant, along with any of its seeds and derivatives from the Controlled Substances Act. Therefore, Delta-8 is not a federally controlled substance when extracted from hemp plants containing less than 0.3% delta-9 THC, but it is a federally controlled substance when extracted from marijuana. Under federal legislation, marijuana remains a Schedule I Controlled Substance.<sup>[1]</sup> Several legality issues have been raised on the standing of delta-8.

On September 15, 2021, the DEA wrote a letter responding to the Alabama Board of Pharmacy clarifying the control status of delta-8 under the Controlled Substances Act (CSA). The letter explained that “cannabinoids extracted from the cannabis plant that has a  $\Delta$ 9-THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of ‘hemp’ and thus are not controlled under the CSA.”<sup>[2]</sup> This signaled to many that delta-8 THC, when derived from hemp, would not be controlled by the CSA and effectively “legalized.”

Then on May 19, 2022, the Ninth Circuit Court of Appeals issued a ruling that confirmed that hemp-derived delta-8 falls within the definition of “hemp” under the 2018 Farm Bill.<sup>[3]</sup> However, because it is a product being consumed by customers, the FDA has jurisdiction of these products when consumed as products, and it has already raised some concerns on the safety of delta-8, including several warning letters to delta-8 production companies as well as consumer updates warning of the intoxicating effects of delta-8.<sup>[4]</sup>

State laws cover the full range of possibilities. Some completely ban delta-8, while others specifically allow it and regulate it. The majority either didn’t have laws that were broad enough to include delta-8 or their drug laws were based on federal law which now excludes delta-8. And some now are implementing their own regulations and legislation for hemp products. A state-by-state breakdown of delta-8 regulations can be found [here](#).

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<sup>[1]</sup> Schedule of Controlled Substances, 21 U.S. Code § 812 (1970), <https://www.law.cornell.edu/uscode/text/21/812>

<sup>[2]</sup> Drug Enforcement Administration, September 15, 2021, <https://hempindustrydaily.com/wp-content/uploads/2021/11/DEA-letter-to-AL-BOP.pdf>

<sup>[3]</sup> AK Futures LLC v. Boyd St. Distro, LLC, D.C. No. 8:21-cv-01027- JVS-ADS (4th Cir. 2022), [https://www.wilsonelser.com/writable/files/Insights/ak\\_futures\\_v\\_boyd\\_street\\_distro.pdf](https://www.wilsonelser.com/writable/files/Insights/ak_futures_v_boyd_street_distro.pdf)

[4] “FDA Issues Warning Letters to Companies Illegally Selling CBD and Delta-8 THC Products,” U.S. Food and Drug Administration, May 4, 2022, <https://www.fda.gov/news-events/press-announcements/fda-issues-warning-letters-companies-illegally-selling-cbd-and-delta-8-thc-products> ; “5 Things to Know about Delta-8 Tetrahydrocannabinol-Delta-8 THC,” U.S. Food and Drug Administration, May 4, 2022, <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>