

Delta-8 THC

Delta-8 THC is an isomer of Delta-9 (the component of the marijuana plant states like Illinois and Colorado have legalized for recreational use), meaning on a molecular level, the two are practically the same — with only slight atomic differences.

Most Delta-8 products are not extracted from a marijuana plant. Instead, producers of Delta-8 covert plant-derived CBD into Delta-8 using a chemical process called isomerization. This process combines CBD with solvent, acid, and heat to cause a chemical reaction that changes CBD into Delta-8.

Implications for Federal Law

In May 2022, the Ninth Circuit Court of Appeals issued a ruling that hemp-derived Delta-8 THC falls within the definition of “hemp” under the 2018 Farm Bill.¹

Health Concerns

While a good portion of the sales of Delta-8 have occurred in states without legal marijuana sales, legal states also see large amounts of Delta-8 sales, due to the price, the lack of regulations, and ability to avoid taxes. Consumers can also have kid-friendly Delta-8 products delivered by mail — which is not allowed in legal marijuana states.

Health of consumers could also be a concern. Delta-8 is psychoactive, intoxicating, and addictive. Over a seven-month period in 2021, the National Poison Data System received 660 reports of adverse reactions in people exposed to Delta-8.² 77% of the unintentional exposures were among children younger than 18.

This year, a four-year-old child died after eating Delta-8 edibles. The Virginia Department of Health determined that “the cause of death is Delta-8-tetrahydrocannabinol toxicity.”³

¹ Ian A. Stewart and Leia Leitner, “Ninth Circuit Rules Hemp-Derived Delta-8 THC Products Are Federally Legal, Creating Broad Implications for the Hemp, Marijuana and Insurance Industries,” Wilson Elser (Wilson Elser, June 13, 2022), https://www.wilsonelser.com/news_and_insights/insights/4579-ninth_circuit_rules_hemp-derived_delta-8_thc#:~:text=On%20May%2019%2C%202022%2C%20the,Distro%2C%20LLC%2C%20No.

² Trisha Koriath, “Accidental Exposure Risks Reported in Children from Delta-8 THC in Cannabidiol Products,” American Academy of Pediatrics (American Academy of Pediatrics, November 1, 2021), <https://publications.aap.org/aapnews/news/17433?autologincheck=redirected>.

³ Claudia Dominguez and Raja Razek, “Virginia Mother Arrested, Charged in Child’s Death after 4-Year-Old Ate THC Gummies, Police Say,” CNN (CNN, October 21, 2022), <https://www.cnn.com/2022/10/21/us/virginia-mother-childs-death-thc/index.html>.



Policy Options

It is advised to reinstitute the federal ban on these products. Not only are regulation and commercialization not advisable for protecting public health, but the federal regulation of intoxicating marijuana-related products is not politically feasible. Prohibiting psychoactive and intoxicating hemp-derived products is the best path forward for defending public health.