

From: [Boos, Terrence L.](#)
To: [Wade Hodge](#)
Cc: [Harper, Jarad O.](#); [Reaves, Irvin](#); [Clark, John E.](#); [DPE Mailbox](#)
Subject: RE: Delta-8 THC
Date: Friday, August 13, 2021 7:52:43 AM
Attachments: [image001.png](#)



Hello Mr. Hodge,

I am sending the email again. I had mistyped your email address and the those copied on the email are seeing my email a second time.

Your email highlights critical details. You are correct delta-8-THC is a constituent of *Cannabis sativa L.* and the tetrahydrocannabinol is found in small quantities in the plant. If the substance is extracted from the plant is subject to treatment under the Agricultural Improvement Act (AIA) and exempted if the material has <0.3% THC.

Arriving at delta-8-THC by a chemical reaction starting from CBD makes the delta-8-THC synthetic and therefore, not exempted by the AIA. Any quantity of delta-8-THC obtained by chemical means is a controlled substance.

Terry

Terrence L. Boos, Ph.D.
Section Chief
Drug & Chemical Evaluation Section
Diversion Control Division
Drug Enforcement Administration

From: Wade Hodge <wade.hodge@agriculture.arkansas.gov>
Sent: Thursday, August 12, 2021 11:02 AM
To: DPE Mailbox <DPE@dea.gov>
Cc: Harper, Jarad O. <Jarad.O.Harper@dea.gov>; Reaves, Irvin <Irvin.Reaves@dea.gov>
Subject: FW: Delta-8 THC

Dr. Boos,

Thank you for the attached letter. We are also in possession of a similar letter sent to the Arkansas State Police. We understand that Delta-8 THC synthetically produced from non-cannabis material is considered a controlled substance. However, we still need further clarification. If CDB is extracted from hemp, and Delta-8 THC is derived from that CBD using the addition of some solvent or acid, do you consider that to be synthetic and therefore illegal, or do you consider that to be a legal derivative of the *Cannabis sativa L.* plant since Delta-8 does occur naturally in hemp in small amounts?

Any clarification you can provide will be greatly appreciated.

Respectfully,

WADE HODGE
CHIEF COUNSEL

Arkansas Department of Agriculture
1 Natural Resources Drive, Little Rock, AR 72205
(501) 219-6361 (O)
(501) 454-3071 (M)
wade.hodge@agriculture.arkansas.gov
agriculture.arkansas.gov



From: Harper, Jarad O. <Jarad.O.Harper@dea.gov>
Sent: Wednesday, August 11, 2021 9:10 AM
To: Wade Hodge <wade.hodge@agriculture.arkansas.gov>
Cc: Reaves, Irvin <Irvin.Reaves@dea.gov>; King, Justin C. <Justin.C.King@dea.gov>; Clark, John F. <John.F.Clark@dea.gov>
Subject: RE: Delta-8 THC

Wade,

Good morning Sir. I have spoked to the DEA Subject Matter Experts in Diversion, and hopefully the attached letter from DEA will clear up any questions you may have. If not, please advise, and it would be my pleasure to find answers for any other questions you may have. Have a great and safe day.

All The Best,

Jarad Harper
Assistant Special Agent in Charge
Little Rock District Office
314-267-9704 (Cell Phone)

From: Wade Hodge <wade.hodge@agriculture.arkansas.gov>
Sent: Tuesday, August 10, 2021 12:09 PM
To: Harper, Jarad O. <Jarad.O.Harper@dea.gov>; King, Justin C. <Justin.C.King@dea.gov>
Cc: Reaves, Irvin <Irvin.Reaves@dea.gov>
Subject: RE: Delta-8 THC

Thanks everyone,

We are just getting tons of inquiries regarding this, and just want to be able to provide accurate information. Any assistance you can provide is greatly appreciated.

Thanks again,

Wade

From: Harper, Jarad O. <Jarad.O.Harper@dea.gov>

Sent: Tuesday, August 10, 2021 12:04 PM

To: King, Justin C. <Justin.C.King@dea.gov>; Wade Hodge <wade.hodge@agriculture.arkansas.gov>

Cc: Reaves, Irvin <Irvin.Reaves@dea.gov>

Subject: RE: Delta-8 THC

Justin,

Good Afternoon. I hope all is well your way. Thank you for passing this along to Irvin and I; I really appreciate it. Irvin and I will put our heads together and get back with Wade on this.

Wade,

Good Afternoon. It is a pleasure to meet you; please feel free to call me anytime; we will do whatever we can to help you out; Irvin and/or I will get back to you soon. Haver a great day and stay safe.

All The Best,

Jarad Harper
Assistant Special Agent in Charge
Little Rock District Office
314-267-9704 (Cell Phone)

From: King, Justin C.

Sent: Tuesday, August 10, 2021 11:38 AM

To: Wade Hodge <wade.hodge@agriculture.arkansas.gov>

Cc: Harper, Jarad O. <Jarad.O.Harper@dea.gov>; Reaves, Irvin <Irvin.Reaves@dea.gov>

Subject: RE: Delta-8 THC

Wade,

Thanks for reaching out to us. I have transferred to another office, but I am going to cc Assistant Special Agent in Charge Jarad Harper and Diversion Group Supervisor Irvin Reaves who are both in Little Rock. I am sure they can assist with your question, or point you in the right direction. Thank you,

Justin

From: Wade Hodge <wade.hodge@agriculture.arkansas.gov>
Sent: Tuesday, August 10, 2021 11:21 AM
To: King, Justin C. <Justin.C.King@dea.gov>
Subject: Delta-8 THC

Special Agent King,

We met sometime back when the Arkansas Department of Agriculture was first in the process of developing an industrial hemp pilot program. As I'm sure you are aware, changes were made in the Agriculture Improvement Act (2018 Farm Bill or AIA) that removed industrial hemp from the controlled substances list. The DEA's Interim Final Rule implementing the AIA (21 CFR Part 1308-1312) indicates that synthetically derived THC's remain schedule I controlled substances.

Some in the hemp industry have begun extracting CBD from hemp, and then extracting Delta-8 THC from that CBD. Since Delta-8 does occur naturally in very small quantities in hemp, they assert that this is material derived from the plant, and is therefore compliant with the AIA and is not contrary to DEA regulations. However, some assert that the DEA considers Delta-8 to be synthetically derived if extracted from CBD instead of directly from the plant.

We are looking for a clarification. Does the DEA consider Delta-8 extracted from CBD (which came from hemp) to be a legal substance or a controlled substance? If you or someone from within your organization could provide such a clarification, it would be greatly appreciated.

Please feel free to call if you have any questions.

Respectfully,

WADE HODGE
CHIEF COUNSEL

Arkansas Department of Agriculture
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U.S. Department of Justice
 Drug Enforcement Administration
 8701 Morrissette Drive
 Springfield, Virginia 22152

www.dea.gov

August 11, 2021

Mr. Wade Hodge
 Arkansas Department of Agriculture
 1 Natural Resource Drive
 Little Rock, Arkansas 72205

Dear Mr. Hodge:

This letter is in response to your control status inquiry regarding delta-8-tetrahydrocannabinol (Δ^8 -THC) under the Controlled Substances Act (CSA). The Drug Enforcement Administration (DEA) reviewed the CSA and its implementing regulations with regard to the control status of this substance.

Δ^8 -THC is a tetrahydrocannabinol substance contained in the plant *Cannabis sativa L.* and also can be produced synthetically from non-cannabis materials. The CSA classifies tetrahydrocannabinols as controlled in schedule I. 21 U.S.C. 812, Schedule I(c)(17); 21 CFR § 1308.11(d)(31). Subject to limited exceptions, for the purposes of the CSA, the term “tetrahydrocannabinols” means those “naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant.” 21 CFR § 1308.11(d)(31). Thus, Δ^8 -THC synthetically produced from non-cannabis materials is controlled under the CSA as a “tetrahydrocannabinol.”

The CSA, however, excludes from control “tetrahydrocannabinols in hemp (as defined under section 1639o of Title 7).” Hemp, in turn, is defined as “the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [Δ^9 -THC] concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. 1639o(1).

Accordingly, cannabinoids derived from the cannabis plant that have a Δ^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. Conversely, naturally derived cannabinoids having a Δ^9 -THC concentration more than 0.3 percent on a dry weight basis is controlled in schedule I under the CSA as tetrahydrocannabinols.¹

¹ The Agricultural Improvement Act of 2018 (AIA), Pub. L. 115-334, § 12619, amended the CSA to remove “tetrahydrocannabinols in hemp” from control. See 21 U.S.C. § 812, Schedule I(c)(17). As noted, however, “hemp” is defined to “mean the *plant Cannabis sativa L.* and *any part of that plant*, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. 1639o (emphasis added). Thus, only tetrahydrocannabinol in or derived from the cannabis plant—not synthetic tetrahydrocannabinol—is subject to being excluded from control as a “tetrahydrocannabinol[] in hemp.”

Mr. Wade Hodge

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If you have any further questions, please contact the Drug and Chemical Evaluation Section at DPE@usdoj.gov or (571) 362-3249.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Boos".

Terrence L. Boos, Ph.D., Chief
Drug & Chemical Evaluation Section
Diversion Control Division

cc: Little Rock Field Office