

Ryan F. Quarles
Commissioner



Office of the Commissioner
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Kentucky Department of Agriculture

April 19, 2021

Dear Kentucky Hemp License Holder:

In recent weeks the Kentucky Department of Agriculture (KDA) received inquiries from members of the public, including licensees within KDA's Hemp Licensing Program, about the legal status of products containing Delta-8 THC under federal law and state law. In response to these inquiries, I am writing this letter to advise you that Delta-8 THC is a Schedule I controlled substance under federal law and Kentucky law; that distributing products containing this substance is illegal; and distributing such products could lead to your expulsion from the Hemp Licensing Program as well as potential exposure to criminal prosecution.

Let's begin with federal law. As you know, in 2018 Congress created a narrow exemption from the Controlled Substances Act's definition of "marijuana" (DEA numbers 7350 and 7360) for hemp that contains not more than 0.3% total Delta-9 THC. Cannabis with total Delta-9 THC in excess of that threshold remains a Schedule I substance.

There is no equivalent exemption for Delta-8 THC. That being the case, the manufacture and marketing of products containing Delta-8 THC, in any quantity or concentration level, remains prohibited by federal law.

And indeed, the federal Drug Enforcement Administration's [Controlled Substances List](#) states that Delta-8 THC and other forms of THC are Schedule I controlled substances. (They are identified with DEA Number 7370.) You can find this specific Schedule I listing on Page 17.

That brings us to state law. Because Delta-8 THC is a Schedule I controlled substance under federal law, it remains a Schedule I controlled substance under state law as well. See 902 KAR 55:015, Section 1(1) (stating that each substance that is scheduled or designated as a Schedule I controlled substance under federal law "shall be scheduled or designated at the state level as a Schedule I controlled substance").

To date, the Kentucky General Assembly has not enacted any law to create an exemption from the Kentucky Controlled Substances Act, KRS Chapter 218A, for products containing Delta-8 THC. Of course, the General Assembly could choose to create such an exemption in the future, as it did in recent years by revising the definition of "marijuana" to create exemptions for four specific categories of products containing cannabidiol (CBD). See KRS 218A.010(28)(c-f).

Because there are no such exemptions for Delta-8 THC in the Kentucky Controlled Substances Act, those substances remain prohibited by state law. For that reason, you should not manufacture, market, or distribute products containing Delta-8 THC. Failure to heed this guidance could result in the revocation of your hemp license and expose you to the risks of prosecution by federal, state, and local law enforcement agencies.

Please do not hesitate to contact me with any questions or concerns you may have about this letter.

Thank you for everything you do to make KDA's Hemp Licensing Program the best in the nation.

Respectfully,

/s/

Joe Bilby
General Counsel