



FORTIS
LAW
PARTNERS

MEMORANDUM

TO: Fresh Bros
ATTN: Adam Rahman
FROM: Henry Baskerville
DATE: August 4, 2020
RE: Legality of Delta-8 THC

Below please find general information addressing the legality of Delta-8 THC.

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The Agriculture Improvement Act of 2018 (the “Farm Bill”) clarifies that hemp and hemp products are legal. The Farm Bill defines “hemp” as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, and extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. This definition includes hemp plants that produce the concentrated liquid extract known as CBD oil.

Furthermore, the Farm Bill amends the Controlled Substances Act (the “CSA”) in two (2) important ways:

1. It removes hemp from the definition of marijuana in section 102(16) of the CSA. 21 U.S.C. §802(16).
2. By listing THC as a Schedule I controlled substance in section 202(c) of the CSA, it creates an exception for tetrahydrocannabinols found in hemp. 21 U.S.C. §812(c).

Delta-8 THC is an isomer and derivative of hemp and CBD that is characterized by its vast therapeutic uses, including appetite stimulation, nausea reduction, relief from anxiety and relief from pain. Delta-9 THC is commonly referred to colloquially as “THC”, the effects of which are highly potent and significantly more psychoactive than Delta-8 THC.

Delta-9 THC is still listed as a controlled substance in the CSA, the legality of which was not altered by the Farm Bill. However, the effect of the Farm Bill on Delta-8 THC is quite different. Because of

the relationship between the Farm Bill and the CSA, Delta-8 THC is not considered to be a controlled substance and therefore is federally legal.

Although the Farm Bill declines to mention Delta-8 THC explicitly, it can be inferred that the production of Delta-8 THC is compliant with federal law so long as it contains not more than 0.3 percent of Delta-9 THC on a dry weight basis. Since Fresh Bros newest product, “Delta8” contains less than 0.3 percent of Delta-9 THC, it satisfies the compliance threshold, and, in turn should be considered a legal product under the parameters set forth in the Farm Bill. In addition, the only illegal isomer addressed in the Farm Bill is Delta-9 THC, a decision that reflects Congress’s intent to legalize the production of Delta-8 THC within the defined limits of the Farm Bill.

Furthermore, even if Delta-8 THC were to be considered as analogous to Delta-9 THC for purposes of federal legality in the Federal Analogue Act, Section 12619 of the Farm Bill explicitly amends the CSA. Section 12619 of the 2018 Farm Bill excludes all THC found in hemp from the term ‘tetrahydrocannabinols’. Because the Farm Bill explicitly amended certain definitions in the CSA, it acts as an extra layer of security should any attempts be made to interpret the Farm Bill as defining products that contain Delta-8 THC to be illegal.

In sum, products that contain Delta-8 THC should be considered federally legal based on the definitions set forth in the Farm Bill so long as they contain less than 0.3 percent of Delta-9 THC.

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If you have any questions, please do not hesitate to contact us.

Sincerely,



Henry Baskerville