

## What is delta-8-THC?

Delta-8-tetrahydrocannabinol (THC) is a form of THC found naturally in extremely low concentrations in the *marijuana* plant, but it can also be chemically derived or genetically altered from *hemp* or cannabidiol (CBD) into an oil form to be ingested or inhaled. Based upon what we currently know, in terms of intoxication, delta-8-THC appears to have similar impairing and psychoactive effects as delta-9-THC (what is commonly known and regulated as THC). Current estimates are that delta-8's psychoactive potency is about 50 percent to 75 percent of delta-9's.<sup>1</sup>

Delta-8 products include vapor cartridges, sodas, candies and other food items. These products are being sold online and alongside CBD products at convenience stores, gas stations, and other shops, across the country and in Washington.

**Tetrahydrocannabinol (THC)** is the chemical in marijuana responsible for most of its psychoactive and impairing effects. There are several different forms (isomers) of this molecule with different names depending on the chemical structure and various degrees of psychoactivity. "THC" on its own usually refers to *delta-9-THC* and is the most studied.

## Is delta-8-THC regulated?

No. Washington state currently only includes *delta-9-THC* in the definition of marijuana in state law under Revised Washington Code (RCW) 69.50.101. Therefore, these products exist outside of state regulation by the Liquor and Cannabis Board (LCB), Department of Agriculture (WSDA) or Department of Health (DOH).

The current status of delta-8-THC under federal law remains unclear and largely outside of regulatory control. This ambiguity is due to a differences between the laws enacted by the 2018 Farm Bill, regulated by the Food and Drug Administration (FDA), and the laws in the Controlled Substances Act, regulated by the Drug Enforcement Agency (DEA).

Table 1 lays out the differences on how delta-9-THC and other THC isomers are regulated.

CANNABIS	
HEMP <0.3% delta-9-THC delta-8-THC (delta-8, d8) other THC isomers CBD	MARIJUANA >0.3% delta-9-THC
Most processors are not licensed by any state agency sellers. Sellers not licensed	Processors and retailers are licensed and regulated by LCB
No age restriction	Can only sell to consumers who are over the age of 21
No potency limit or maximum container size	Potency limit is based on the product type, 10 mg/serving cap for edibles; 100 mg total per package.
Very limited testing and enforceability; No tracking, or oversight No oversight of impurities or manufacturing practices	Tested for potency, mycotoxins, microbials, and solvents Seed-to-sale tracking
Minimal labeling regulation	Subject to labeling rules and approval
Not taxed	Taxed at 37%
No distance restrictions from schools	Must be at least 1000 feet from a elementary and middle schools
Hemp is regulated by State: WS Department of Agriculture Federal: US Department of Agriculture (USDA), Food and Drug Administration (FDA)	Marijuana is regulated by State: Liquor and Cannabis Board, Department of Health (medical) Federal: Drug Enforcement Administration (DEA)

## What are the public health and safety concerns?

*Although our current understanding of delta-8 is evolving and research is limited at this time, we have concerns for public health and safety.*

### Youth and young adults under 21 have access:

- For sale at corner stores and online.
- No federal or state laws setting a minimum age to purchase.
- Lower cost of these products (since not subject to the 37% excise tax) makes them more attractive to youth.

### Public safety is at risk:

People may consume without understanding that they may be too impaired to safely operate a vehicle or machinery.

High visibility of marijuana products in everyday spaces normalizes marijuana use, may make it seem less harmful, and can contribute to increased use.

### Consumer safety is at risk:

- No warning labels despite being intoxicating.
- No packaging and labeling and testing requirements.
- Consumers may be exposed to additional harmful chemicals, bi-products, or foreign contaminants.
- Reported cases of adverse effects from Poison Centers.

## What is currently being done?

*Rules and regulations are being considered to stop delta-8 and other THC isomers from being sold without regulation at the federal and state levels. In Washington state, changes to state law would be necessary and may include LCB, WSDA and DOH.*

In Washington:

- Liquor and Cannabis Board is working within its authority to address products *within* licensed marijuana retailer stores and communicate expectations to producers and licensees. LCB will be including *all* THC in its 10 mg/serving potency cap in edible products.<sup>2</sup>
- The House Commerce and Gaming Committee was briefed in March by LCB Director Rick Garza.<sup>3</sup>
- LCB has begun to pull together partner agencies to seek broader solutions to the sale of these products *outside* licensed retail stores, which could include legislation to expand the definition of THC in state statute and/or licensing hemp-derived intoxicating compounds.

In/across other states:

- The newly formed Cannabis Regulators Association ([CANNRA](#)) is convening states regularly on this issue. Statute and rule differ in each state, but some promising paths have been identified.
- Oregon, as a short-term solution, is considering a bill which would allow their Liquor Control Commission and Department of Agriculture to prohibit sales to minors of intoxicating products and set potency limits regardless of whether the product is from hemp or marijuana. The proposed bill also looks to establish a task force to study long term solutions.<sup>4</sup>

At the federal level: Food & Drug Administration (FDA) and Drug Enforcement Administration (DEA) are beginning to assess the issue.

## What can communities do?

*The current structure that allows delta-8 products to be sold without regulation will take some time to solve.*

For the time being, prevention professionals can:

- Continue to stay educated and informed on this emerging trend.
- Understand which products containing delta-8-THC or other THC isomers are available in their community.
- Be prepared to answer questions from community members and possibly policymakers about delta-8.
- Play a role in providing education to policymakers at local, state, and federal levels about this issue and the concerns around health impacts.

## What are communities and local governments currently doing?

Some examples of where others are having success include:

- Defining and using “cannabis” in the local code rather than only referencing “marijuana.” This ensures that psychoactive compounds derived from *any* part of the plant are regulated. Model language has been developed and can be shared.
- Broadening the definition of “marijuana” to include “delta-8 *and* any other THC isomers derived from the cannabis plant family” (i.e., including both the marijuana and hemp plants).
- Adopting sales restriction regulations on CBD and/or any THC isomer products within the jurisdiction.

**Delta-8-THC products are nearly as impairing as marijuana products available at licensed marijuana retailers but sold online and in everyday stores without regulation and oversight. These intoxicating products are concerning due to youth access and risks to consumer and public safety.**

<sup>1</sup> World Health Organization (2018). WHO Expert Committee on Drug Dependence Critical Review: Isomers of THC Report.

<sup>2</sup> Liquor and Cannabis Board (2021). Tetrahydrocannabinol (THC) compounds other than delta-9 and the conversion of CBD, hemp, or both to delta-8 THC, delta-9 THC, or any other cannabis compound that is not currently identified or defined in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), or both. Policy Statement Number PS-21-01. April 29, 2021. <https://lcb.wa.gov/laws/policy-statements>

<sup>3</sup> Washington State House Commerce and Gaming Committee. March 25, 2021. <https://www.tvw.org/watch/?eventID=2021031442>

<sup>4</sup> Oregon HB 3000A Relating to cannabis; declaring an emergency. <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3000>



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