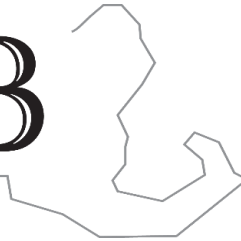


# MAHBB

Assisting Massachusetts Boards of Health through  
training, technical assistance and legal education



## Massachusetts Association of Health Boards

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### **Hemp-Derived Synthetic Cannabis Products containing Delta-8 THC or Delta-10 THC cannot be sold or manufactured in Massachusetts.**

1. The Massachusetts Department of Agricultural Resources (MDAR) is the agency that regulates hemp; and MDAR has deemed that selling or processing hemp-derived Delta-8 (THC)<sup>1</sup> products is illegal.

**Because delta-8 is not naturally occurring in hemp (except for possible trace amounts), to produce delta-8 in commercial quantities it must be derived from hemp synthetically. While the Farm Bill did removed hemp from the Controlled Substances Act, it did not impact the control status of synthetically derived cannabinoids, thus delta-8 THC remains a controlled substance, regardless of the source. As a result, we do not allow hemp-derived Delta-8 products to be processed or sold in Massachusetts.**<sup>2</sup> *(Emphasis added).*

2. The Massachusetts Department of Public Health (DPH) is the agency that regulates food pursuant to 105 CMR 500. The food code requires that all edible products must be from approved food sources that comply with federal, state, and local regulations and must not contain any prohibited ingredients. Federal law prohibits the addition of CBD (hemp-derived cannabidiol products) in food because it is not an approved food source. Therefore, **any edible product that contains hemp-derived Delta-8 and/or Delta-10 cannot be manufactured or sold in Massachusetts.**<sup>3</sup>

3. Massachusetts law bans the sale of all flavored tobacco products except in state-licensed smoking bars for onsite consumption only.<sup>4</sup> The definition of tobacco products includes “electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine in the product.”<sup>5</sup> Therefore, **all flavored vaping products, including hemp-derived THC vaping products with Delta-8 and Delta-10 are prohibited.**

## Discussion

<sup>1</sup> Because Delta-10 is also a synthetically manufactured THC hemp-derived product, MDAR’s legal position on Delta 8 would similarly apply to Delta-10.

<sup>2</sup> <https://www.mass.gov/guides/hemp-in-massachusetts-faqs#-is-it-legal-to-manufacture-delta-8-thc-from-hemp?>

<sup>3</sup> 105 CMR 500.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

While adult-use marijuana, also known as cannabis, is legal in Massachusetts, products containing Delta-8 THC and/or Delta-10 THC are not. Cannabis is a mixture of the dried flowers from the *Cannabis sativa* plant. The psychoactive (mind-altering) chemical in marijuana, responsible for most of the intoxicating effects is the naturally occurring **Delta-9 tetrahydrocannabinol (Delta-9 THC)**. Delta-9 THC is found in the resin from the leaves and buds mainly from the female plant.<sup>6</sup> Delta-9 (THC) is the active ingredient which passes from the lungs into the bloodstream, and eventually throughout the body into the brain's receptors which influence pleasure, memory, sensory and time perception.<sup>7</sup>

The Marijuana plant also contains more than 500 other chemicals, 100 of which are other cannabinoids (CBD), including Delta-8 and Delta-10. Cannabinoids are "isomers" of Delta-9, meaning they are made of the same atoms, but arranged differently. The Marijuana plant contains miniscule amounts of naturally occurring Delta-8 and Delta-10 cannabinoids.

Notwithstanding Massachusetts state law legalizing it, marijuana is still illegal pursuant to federal law. The Controlled Substance Act lists marijuana as a Schedule I controlled substance. Other substances on the list include heroin and ecstasy<sup>8</sup>.

The 2018 Farm Act removed hemp from the definition of marijuana. However, since Delta-8 and Delta-9 are only present in the marijuana plant in miniscule amounts, products containing these types of THC must be synthetically manufactured by converting hemp-derived cannabidiol (CBD) into highly concentrated THC. Since these Delta products are synthetically manufactured, they are considered Schedule I controlled substances and remain on the Federal Drug Enforcement Agency list of controlled substances.<sup>9</sup>

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<sup>6</sup> <https://nida.nih.gov/publications/research-reports/marijuana/what-marijuana>

<sup>7</sup> *Id.*

<sup>8</sup> 21 USC §812.

<sup>9</sup> See, Drug Enforcement Admin., *Implementation of Agricultural Improvement Act of 2018*, 85 Fed. Reg. 51,639, 51,641 (2020).