



DELTA-8-THC, DELTA-9-THC and DELTA-10-THC

1. Statute Amended: RSA 439-A.

The purpose of this revised document is to inform our licensees of the recent state statute change within RSA 439-A in regard to DELTA-8-THC, DELTA-9-THC, and any other THC variant.

On 8/8/2023 Governor Sununu signed an amendment to RSA 439-A which added in paragraph A:4. Paragraph A:4 states the following:

439-A:4 Hemp-Derived Products Containing THC Prohibited. Nothing in this chapter shall be construed to authorize the sale of products that are derived from hemp which contain natural or synthetic tetrahydrocannabinol (THC) greater than 0.3 percent on a dry weight basis, which appear in any formulation, including delta-8 THC, delta-9 THC, or any other THC isomer variant.

This Amendment will become law, effective **10/09/2023**.

This means the overwhelming majority of DELTA-8-THC, DELTA-9-THC, and Delta 10-THC products that are currently for sale in many licensed establishments will be illegal on **10/09/2023**. This is in addition to the DELTA-8-THCO and DELTA-9-THCO that was and is still illegal to possess and sell.

The Division of Enforcement & Licensing urges licensees to take the coming six weeks to either remove or return your current stock of DELTA-8-THC, DELTA-9-THC, and Delta 10-THC products which will become illegal effective **10/09/2023**. It should be noted that the phrase “*or any other THC isomer variant*” includes Delta 10-THC HHC, THC-O, THC-B, THC-H, THCP, combinations such as HHC-B, HHC-O, HHC-P and *any other THC isomer variant*.

2. Purpose.

The Division of Enforcement & Licensing is disseminating information to provide guidance regarding DELTA-9-THCO and DELTA-8-THCO products being distributed in the State of New Hampshire to retail establishments that hold liquor licenses. The information contained in this document is directly



from communication by the U.S. Department of Justice- Drug Enforcement Administration, dated February 13, 2023.

3. Discussion of the Issues.

The Division of Enforcement & Licensing has received multiple inquiries regarding the legality of products, known as DELTA-9-THCO and DELTA-8-THCO, being distributed to New Hampshire liquor licensees for retail sales.

The products known as DELTA-9-THCO and DELTA-8-THCO are regulated through the federal Controlled Substances Act (CSA) of THC acetate ester (THCO). The only substances of which the Drug Enforcement Administration (DEA) is aware of the THC acetate ester are DELTA-9-THCO (DELTA-9-THC acetate ester) and DELTA-8-THCO (DELTA-8-THC acetate ester). The Drug Enforcement Administration (DEA) reviewed the CSA and its implementing regulations with regard to the control status of these substances.

The CSA classifies tetrahydrocannabinols (THC) 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).

DELTA-9-THCO and DELTA-8-THCO do not occur naturally in the cannabis plant and can only be obtained synthetically, and therefore do not fall under the definition of hemp. DELTA-9-THCO and DELTA-8-THCO are tetrahydrocannabinols having similar chemical structures and pharmacological activities to those contained in the cannabis plant. Thus, DELTA-9-THCO and DELTA-8-THCO meet the definition of “tetrahydrocannabinols,” and they (and products containing DELTA-9-THCO and DELTA-8-THCO) are controlled in schedule I by 21 U.S.C. § 812(c) Schedule I, and 21 CFR § 1308.11(d). The Controlled Substances Code Number (CSCN) assigned to these substances are 7370, which is that of tetrahydrocannabinols, and the conversion factors (CF) are 1.00. Because DELTA-9-



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THCO and DELTA-8-THCO are controlled substances, they do not meet the definition of controlled substance analogues under 21 U.S.C. § 813.

Since DELTA-9-THCO and DELTA-8-THCO are Schedule I controlled substances, they are illegal to possess, sell or distribute within the State of New Hampshire; therefore, New Hampshire Liquor Commission licensees are not authorized to sell these products on their licensed premises.



4. Questions and Additional Information.

More Questions? - If you have questions about the interpretation of these statutes beyond what has been provided in this circular you are encouraged to contact the Division of Enforcement & Licensing at 603-271-4305 to have your questions answered.