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The Feds Are Coming For Delta-8 THC



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[August Battles](#) was barely out of high school when he and a friend decided to capitalize on the 2018 Farm Bill—in which Congress and President Donald Trump legalized an American hemp industry—and started selling “CBD cigarettes,” smokes containing the low-THC, high(er) CBD cultivar of cannabis sativa that’s legal under federal law.

Packs of their Vance Global “guilt-free smokes” now appear in 12,000 stores across the country, [they claim](#). But the market is fickle and consumer tastes shift quickly. So after the CBD boom fizzled into a bust, Battles pivoted to [Delta-8 THC](#), the hemp-derived cannabinoid that’s nearly identical to the “real” THC in marijuana banned under federal law.

Delta-8 THC absolutely gets you high, but since the source product is hemp, [Delta-8 products remain federally legal](#)—and can be found in smoke shops, novelty stores, bodegas, gas stations and online all over the United States.

But maybe not for much longer.

As health agencies indicated on Tuesday, the federal government is finally taking notice of this glaring loophole in federal drug law. And hemp industry players believe [action may soon follow](#).



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On Tuesday, the federal Centers for Disease Control and Prevention and Food and Drug Administration [published](#) warnings advising the public of “serious health risks” posed by Delta-8 THC products.

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According to the FDA, between December 2020 and July 2021, poison-control centers received 660 calls from people who consumed Delta-8 THC—many unintentionally, almost all of them children, dozens of whom were hospitalized with very familiar-sounding symptoms: lethargy, slurred speech, erratic heart rates, sedation, and even “coma.”

The warnings echo advisories issued over the past decade about “regular” adult-use cannabis products containing THC—triggered by people, sometimes children but frequently adults, who overconsumed.

Battles suspects a similar phenomenon is at play. “Those people in the hospital, they were there because they were too high, more than likely,” he said.

One big difference is that unlike tightly regulated adult-use cannabis, Delta-8 THC is wholly unregulated. And, as the FDA pointed out, there are no requirements around labeling or product quality or safety.

The same was true with products containing CBD. And the [FDA also cracked down](#) on CBD products, but for mislabeling products or making claims about health benefits unsupported by research.





After a brief boom, the FDA cracked down on CBD products marketed for pets. (Photo by Smith ... [+] GETTY IMAGES)

The other major difference—and the one that spells trouble for the Delta-8 THC industry—is that unlike CBD, Delta-8 products get you wrecked.

Last month, Vance Global released a line of Delta-8 THC gummies that are “as highly potent as possible,” said Battles, who wanted to avoid the predictable complaints from unsatisfied (and un-stoned) customers who weren’t getting their money’s worth.

“Half a gummy will put you on your ass,” he promised. And so when the CDC and FDA indicated they were watching, Battles “definitely wasn’t surprised.”



So far, none of the [Delta-8](#) vendors or distributors contacted for this article reported any changes in vendor, distributor, or customer attitudes as a result of the FDA/CDC warnings. But they did interpret the federal agencies' warning as a clear sign.

“It’s kind of that first blow against the industry,” Battles said. “They kind of did the same thing with CBD.”

It would not be the first. To date, 16 states have [banned or restricted sales](#) of Delta-8 products, including cannabis-friendly states like Colorado, Michigan, and [Nevada](#). Bans in those states is motivated in part by complaints from the adult-use cannabis industry, which rightly views Delta-8 THC products as an existential threat.

But the federal government may also take action. For years, the FDA has been mulling standards and regulations for CBD products. Since Delta-8 has intoxicating, psychoactive properties, the FDA may move more swiftly. The other compounding factor is that since Delta-8 THC products first appeared about two years ago, the market is flooded with companies offering the product—often without age restrictions.

“The FDA is reacting like it does every time,” said Lo Friesen, the founder and CEO of HeyLo Cannabis, a licensed, adult-use cannabis company headquartered in Washington. “But this one is heightened in scope because it’s everywhere.”

Some Delta-8 THC purveyors would welcome regulation. [Chase Slappey](#) is the co-founder of Atlanta-based ATLRx, which markets and sells Delta-8 THC and CBD products online and in brick-and-mortar locations throughout Georgia.

Unlike products that may appear in truck stops and seedier locations—such as the very products the CDC and FDA warned about on Tuesday—ATLRx products are lab tested and have unique QR codes that provide “full panel” lab results, he said.

“If you eat too much, you’ll freak out, especially if you don’t have a tolerance. That’s just naturally going to happen,” he said. “But there are a lot of bad actors out there who are not properly manufacturing Delta-8 themselves.”

For now, the Delta-8 market is unaffected. If anything, the FDA may have unintentionally heightened awareness and interest.

But when a crackdown comes, Friesen believes the FDA will start with cease-and-desist orders aimed at a select few Delta-8 companies, starting with the biggest or the most unscrupulous—a near-repeat of how the FDA cracked down on the CBD industry.

“We’re going to see the same cycle with Delta-8 products,” she predicted. That may lead to an amendment to the Farm Bill that clarifies which hemp derivatives are legal, which aren’t, and which require regulation.

Looming over all of this, of course, is federal cannabis legalization. If the Delta-9 THC in marijuana was legal, demand for Delta-8 THC—a synthetic product, created to fulfill the market inefficiency posed by drug prohibition—would evaporate. If federal marijuana legalization happens, Delta-8 will be a nonfactor.

But if the federal government adds Delta-8 to the Controlled Substances Act, the whole drama will play out yet again, a few years or months down the road, with yet another cannabis product not captured under the law.

As ATLRx’s Slappey noted, “There’s always another cannabinoid.”

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