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**FIRM MANAGEMENT**

# A New Kind of Cannabis Business: The Legalities of Delta 8 THC

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**Craig Smalley, MST, EA** • Mar. 16, 2021



Delta 8 THC, a tetrahydrocannabinol isomer of THC derived from hemp extract, currently burning up the charts, and is very popular in vape cartridges & edibles. Nowadays, questions about its legality have become as popular as the substance itself. The legalities of Delta-8 have been called into question since the 2018 Farm Bill was passed making hemp legal. In order for hemp to be legal it has to contain less than 0.3% dry weight contains Delta-9 THC which is the psychoactive THC that gets a user high.

Delta 8 was called into question consequently, not only cannabis with enough delta-9 THC is a Schedule I drug under the Controlled Substances Act, but all tetrahydrocannabinol is, per Drug Code 7370. As the Farm Bill states, hemp and any derivative there of is legal. Delta-8 is a derivative of the hemp plant and is therefore legal.

So what does Delta 8 THC actually do to the user? Some people state it gives them a psychoactive result much like Delta-9, however other people state that it can cause nausea, paranoia, and vomiting. It all boils down to how much you take.

On January 15, 2021, the FDA did a study on Delta-8 and issued final regulations on the legality of the compound. As Delta-8 is not Delta-9 it is not regulated under the Controlled Substance Act of 1971.

Section 280E does not come into question here with Delta 8. Section 280E is the section that states any drug for purposes of income tax can only take cost of goods sold (COGS) to limit their tax exposure. Delta 8 as previously stated does not fall into this category.

[The 2021 FDA guidelines](#) State that more hemp sampling must be done and that derivatives of the hemp are therefore legal, which brings us back full circle to Delta 8.

It should be interesting to see where we go from here.

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