

February 8, 2024

Information about THCa Hemp Flower

This document was prepared for HH Harvest Co (HH Harvest) about THCa hemp flower. It is not intended to be legal advice and should not be relied upon as such. Please consult a lawyer if you have legal questions.

What is THCa hemp flower? “THCa hemp flower” is the name for cannabis buds with delta-9 THC levels that do not exceed 0.3% by dry weight, but which have high levels of THCa.

What is THCa? “THCa” is the abbreviation for “tetrahydrocannabinolic acid”, a cannabinoid produced in abundance by the cannabis plant. THCa does not produce intoxication; however, under certain conditions, including heat, exposure to light, and time, it can convert to delta-9 THC, which does have an intoxicating effect. The conversion from THCa to delta-9 THC is known as “decarboxylation” and occurs when THCa flower is smoked or vaped.

Will smoking or vaping THCa hemp flower make users feel “high”? Although everyone is different, it is possible that a user will feel intoxicated or “high” after smoking THCa hemp flower. We recommend informing your customers of the possibility of feeling “high” or intoxicated when using this product. We also recommend that you not sell THCa hemp flower to minors.

Will using THCa hemp flower cause users to fail a drug test? Yes. THCa hemp flower contains cannabinoids, including THC, which may cause a user to fail a drug test. Therefore, individuals should not use THCa hemp flower if they are subject to drug testing.

Is THCa hemp flower lawful under federal law? Yes. Under federal law, harvested THCa hemp flower is lawful. This is because the federal 2018 Farm Bill distinguishes between lawful harvested hemp and unlawful marijuana based on the levels of delta-9 THC, not THCa.¹ Harvested cannabis, including its flowers and buds, with no more than 0.3% delta-9 THC by dry weight is lawful hemp, regardless of the amount of THCa or any other cannabinoid, such as CBD, that it contains. Additionally, the federal Controlled Substances Act, which regulates drugs, removes hemp from the definition of marijuana. In other words, hemp is not an illegal controlled substance under federal law.²

What does the DEA say about THCa hemp flower? THCa hemp flower meets the DEA’s definition of lawful hemp. According to the DEA, “*material that is derived or extracted from the cannabis plant such as tissue culture and any other genetic material that has a delta-9*

¹ See 7 U.S.C. § 1639o(1) (2018 Farm Bill): “*The term ‘hemp’ means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.*”

² See 21 U.S.C. § 802(16)(B) (Controlled Substances Act): “*The term “marihuana” does not include—*
(i) hemp, as defined in section 1639o of title 7.”

tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis meets the legal definition of “hemp” and is thus not controlled under the CSA.”³

Have any federal courts ruled on THCa hemp flower? Not specifically. However, the federal Ninth Circuit Court of Appeals has stated the following regarding another type of hemp product, which supports the legal status of THCa hemp flower: “*the only statutory metric for distinguishing controlled marijuana from legal hemp is the delta-9 THC concentration level.*”⁴ Additionally, the federal district court for the Eastern District of Arkansas ruled: “*Under the 2018 Farm Bill’s standard, the only way to distinguish controlled marijuana from legal hemp is the delta-9 THC concentration level. Additionally, the definition extends beyond just the plant to “all derivatives, extracts, [and] cannabinoids.” The definition covers downstream products and substances, if their delta-9 THC concentration does not exceed the statutory threshold.*”⁵

Is THCa hemp flower lawful in all states? No. State laws differ regarding whether or not harvested hemp and hemp flower can be sold or possessed and if a license or permit is required in order to handle it. Additionally, some states calculate the concentrations of both delta-9 THC and THCa, rather than just delta-9 THC, to determine if a harvested cannabis bud is lawful hemp or unlawful marijuana. This calculation, in which both THCa and delta-9 THC are used to determine the legal status of a harvested hemp flower, is referred to as “total THC”. It is the calculation used in all states for pre-harvested hemp. The total THC calculation is also used in some states, but not all states, for harvested hemp and/or hemp products. **You should not possess or sell THCa hemp flower if it is illegal in your state. You should consult with a lawyer if you are unsure of the legal status of THCa hemp flower in your state.**

Can THCa hemp flower be shipped across state lines? Yes, the interstate transfer of hemp, which includes THCa hemp flower, is authorized by federal law. 7 USC § 1621 subsection 10114(b), states in relevant part: “*No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (AMA) (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.*”⁶ Although state laws vary with respect to hemp and hemp products, it is absolutely clear that states and Indian tribes may not prohibit the transport of them through their borders.

Is it lawful to smoke THCa hemp flower in public or to have a package of it open in a car? Because state laws vary regarding THCa hemp flower, and also due to the current confusion about its legal status, we do not recommend smoking it in public or having an open package of it in

³ You can read the DEA’s letter here: <https://s3.documentcloud.org/documents/21580238/21-7692-shane-pennington-cannabis-seeds-tissue-genetic-material-11-18-21-signed-1.pdf>

⁴ *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682 (9th Cir. 2022)

⁵ *Bio Gen LLC et al v. Sanders et al*, 4:23 CV 718 BRW (September 7, 2023) [Document 65]

⁶ 7 USC § 1621 subsection 10114(b) can be read here: <https://uscode.house.gov/statviewer.htm?volume=132&page=4914#>

vehicles. Additionally, we recommend that it be sold to consumers only in pre-packaged, sealed bags or containers with labels clearly stating that it is lawful hemp.

How can you be sure that the THCa hemp flower you are purchasing meets the legal requirement for hemp? We recommend reviewing a lab report, called a Certificate of Analysis (COA), in conjunction with your attorney. A COA shows the levels of cannabinoids, including delta-9 THC, in a hemp product. HH Harvest Co always provides a current COA for its hemp products showing that they are compliant under federal law at the time they leave its facility. Importantly, if your state uses a total THC calculation⁷ to determine whether post-harvest cannabis flower is lawful, then THCa hemp flower is probably not legal in your state and we recommend that you consult a lawyer before receiving, possessing, or selling it.

How should you store THCa hemp flower? All of HH Harvest's THCa hemp flower is tested before leaving its facilities to ensure legal compliance. In other words, HH Harvest Co only possess and distributes lawful hemp. However, it is important to understand that THCa hemp flower will change form and become illegal marijuana if the THCa in it decarboxylates and raises the concentration of delta-9 THC to above 0.3%. In addition to the natural process of decarboxylation over time, THCa will also convert to delta-9 THC when it is exposed to heat and light. We strongly recommend storing THCa hemp flower in a cool, dark, dry location in order to limit the amount of THCa that is unintentionally converted to delta-9 THC through the process of decarboxylation.

Does HH Harvest CO have a legal opinion letter about THCa hemp flower? Yes. HH Harvest Co has a legal opinion letter regarding the legal status of THCa hemp flower. Please be advised that this informational document and the opinion letter were created solely for HH Harvest Co and that they are not intended to be, nor should they be relied upon as, legal advice to any other person or company. Contact your lawyer if you have legal questions about THCa hemp flower.

⁷ A total THC calculation adds the delta-9 THC amount to 87.7% of the THCa amount to see if the total THC does not exceed 0.3%. Fortunately, most COAs show the total THC amount in addition to delta-9 THC so that you do not need to do the calculation yourself.