

Date:	2024-05-15 14:03:59 -04:00	Temperature:	23.9 °C
Serial:	LL030561	Cultivar:	
LightLab	SAYLOR LAB	Moisture:	0.0%
Operator:		CoA Revision:	0
Sample ID:	ANCHORED THCA DIAMONDS AND SAUCE	Calibration Exp:	2025-01-05
Method:	LightLab HPLC	Product:	
Test Type:	Concentrate	SKU:	
Weight / Volume:	0.1 g	Batch:	
Solvent:	30 ml		
Notes:			

Cannabinoid Profile

Analyte	%	LOQ
THC-A	42.5	1.5
Δ9-THC	ND	1.5
CBD-A	ND	1.5
CBD	19.2	1.5
CBG-A	ND	1.5
CBG	ND	1.5
CBN-A	ND	1.5
CBN	1.8	1.5
CBC-A	ND	1.5
CBC	3.1	1.5
Δ8-THC*	ND	12.0
Δ10-THC	ND	1.5
THCV-A	ND	1.5
THCV	ND	1.5
Total THC	37.2	
Total CBD	19.2	
Total Cannabinoids	66.5	

ND = Not Detected; n/a = Not Analyzed; LOQ = Limit of Quantification; Total THC = (0.877 x THC-A) + Δ9-THC; Total CBD = (0.877 x CBD-A) + CBD. * Δ8THC has lower precision and higher detection limit than other cannabinoids.

THCA PRODUCT INFORMATION

This is a federally legal hemp product, as defined in the Agriculture Improvement Act of 2018, also known as the Farm Bill. The 2018 Farm Bill defines hemp as “Cannabis sativa L. and any part of that plant, including...all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers...with a delta-9 tetrahydrocannabinol” [THC] “concentration of not more than 0.3 percent on a dry weight basis” and legalizes all hemp products that meet this definition. See the attached Certificate of Analysis (COA) for this product to confirm its status as legally compliant.

It is important to notice the distinction between this federally legal THCA product, and illegal marijuana. Regardless of how this product looks or smells, this product is in fact federally legal due to its $\Delta 9$ -THC concentration having been determined via laboratory testing to be less than 0.3% of the total dry weight of this product. THCA is an entirely different chemical compound than $\Delta 9$ -THC, and a hemp product’s THCA content has no bearing on the legal status of such product.

The DEA has offered clarification multiple times on the legality of hemp-derived cannabinoids like THCA, confirming definitively that THCA-containing hemp flower is federally legal. According to a statement made by a DEA representative during a Town Hall video webinar on June 24, 2021, “...per the Farm Bill, the only [cannabis product] that is a controlled substance is Delta-9-THC greater than 0.3% on a dry-weight basis.” This product contains less than 0.3% Delta-9-THC and is therefore federally legal.

THCA PRODUCT DISCLAIMER

- Every THCA product we receive is shipped to us in dark refrigeration.
- When THCA products arrive at our facility, every batch undergoes in-house high-performance liquid chromatography (HPLC) testing to verify quality and compliance. After testing, those products are immediately stored in a climate-controlled environment at our warehouse.
- Our warehouse ships every THCA product to our stores in dark refrigeration. When they arrive, each THCA product is kept in a refrigerator until purchase, or for subsequent HPLC testing.
- Periodically, every THCA product in each of our retail stores undergoes additional rounds of HPLC testing to ensure that quality and compliance are maintained for the entire time that product is in our care.
- Upon purchase, every product leaves our stores with a batch-specific Certificate of Analysis (COA) to demonstrate that product's compliance with laws and regulations. Keep your paper COA or linked QR code on hand in case anyone has questions about your product.

We have done our part in preserving the quality and safety of the finest THCA products on their journey to you—now it's your turn to give them the care they deserve. Keep your THCA products in an airtight container, and store them in a cold, dark, dry place for safekeeping.

kightlaw

January 20, 2023

Saylor Enterprises LLC dba CBD Plus USA
Attn. David Saylor
117 Parkview Circle
Piney Flats, TN 37687

Sent via email: tncbdceo@cbdplususa.com

Re: Legal Status of THCa in Smokable Hemp

Dear Mr. Saylor:

This letter is written at the request of Saylor Enterprises LLC dba CBD Plus USA (CBD Plus USA), regarding the legal status of certain hemp products, namely hemp containing tetrahydrocannabinolic acid (THCa) in concentrations that exceed 0.3% by dry weight. The specific question addressed is: **“Are hemp products, including harvested hemp flowers and buds, that contain THCa concentrations in excess of 0.3% by dry weight controlled substances under federal law when their delta-9 tetrahydrocannabinol (delta-9 THC) concentrations do not exceed 0.3% by dry weight?”** As discussed in this letter, the answer to this question is **“No”**. With respect to harvested cannabis material, the sole factor that distinguishes between lawful hemp and unlawful marijuana is the concentration of delta-9 THC.

The analysis and conclusions contained in this letter are based on the Agricultural Act of 2014 (2014 Farm Act)¹, the Agricultural Improvement Act of 2018 (Farm Bill)², the federal Controlled Substances Act (CSA)³, the Drug Enforcement Administration’s (DEA) recently published Interim Final Rule (IFR)⁴, the DEA’s recently issued letter to the Alabama Board of Pharmacy (Letter)⁵, a DEA letter regarding cannabis seeds and other cannabis materials⁶, a recent opinion by the Ninth Circuit Court of Appeals⁷, and the NC laws and regulations regarding hemp. This letter does not address any requirements under the federal Food, Drug & Cosmetic Act and associated regulations by the Food and Drug Administration (FDA).

This letter is solely for CBD Plus USA, but I have been informed it may be shared with select parties. All third parties are specifically advised that this letter is not intended to be legal advice

¹ <https://www.govinfo.gov/content/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf>

² <https://www.congress.gov/115/bills/hr2/BILLS-115hr2enr.pdf>

³ 21 U.S. Code § 801 *et seq.*

⁴ https://www.deadiversion.usdoj.gov/fed_regs/rules/2020/fr0821.htm

⁵ <https://docs.google.com/viewerng/viewer?url=https://cannabusiness.law/wp-content/uploads/DEA-letter-re-D8-to-Alabama.pdf&hl>

⁶ <https://s3.documentcloud.org/documents/21580238/21-7692-shane-pennington-cannabis-seeds-tissue-genetic-material-11-18-21-signed-1.pdf>

⁷ *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682 (9th Cir. 2022)

for any party other than CBD Plus USA and should not be construed or relied upon as such. It is accurate as of the date above.

**PART 1- DISCUSSION OF THE ISSUE:
THE CONCENTRATION OF DELTA-9, NOT THCA, IS THE SOLE FACTOR
IN DETERMINING A CANNABIS PRODUCT’S CONTROLLED STATUS**

There are dozens of forms of the tetrahydrocannabinol (THC) molecule. These various forms are called isomers. An isomer is one of two or more compounds that contain the same number of atoms of the same elements but differ in structural arrangement and properties.⁸ There are at least thirty THC isomers⁹, of which THCa and delta-9 THC are two of the most well-known. Additionally, delta-8 THC (D8-THC) and delta-10 THC (D10-THC) have recently gained more attention in the media and marketplace. As discussed below, the only THC isomer that is used to determine whether harvested hemp and hemp products are lawful under federal law is delta-9 THC. The quantity and concentration of other THC isomers, including THCa, are totally irrelevant with respect to the legal status of harvested hemp and hemp products.¹⁰

**PART 2- FEDERAL LAW:
HEMP IS NOT A CONTROLLED SUBSTANCE**

Hemp initially became exempt from the CSA, and thus removed from the list of controlled substances, by virtue of the 2014 Farm Act when produced pursuant to a state’s industrial hemp pilot program. The current Farm Bill, enacted at the end of 2018, removed both “hemp” and “THC in hemp” from the CSA.¹¹ Hemp is lawful throughout the United States (US).

The Farm Bill defines “hemp” expansively. The definition includes the hemp plant 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 THC concentration of not more than 0.3 percent on a dry weight basis.*”¹² (*emphasis added*)

The sole distinction between lawful cannabis (hemp) and unlawful cannabis (marijuana) is the concentrations of delta-9 THC. Cannabis with delta-9 THC concentrations that do not exceed

⁸ <https://www.merriam-webster.com/dictionary/isomer>

⁹ See, eg, this website: <https://cannabislifework.com/amount-of-isomers-in-thc/>. See also, this website: <https://cannabusiness.law/thc-analogs-a-family-divided/>

¹⁰ Please note that, while the concentration of THCa is not relevant in determining the legal status of harvested hemp or hemp products, it is relevant in determining the legal status of hemp that has not been harvested. This is because USDA regulations require hemp to be tested for delta-9 THC using a “post-decarboxylation method” before it can be harvested. Because THCa converts to delta-9 THC when decarboxylated the THCa concentration of a pre-harvest hemp sample matters. However, and as discussed in this letter, this only applies to hemp that has not been harvested. It does not apply to harvested hemp and products made from it. Further reading on this issue, including testing standards, can be found at this website: <https://cannabusiness.law/total-thc-and-harvested-hemp/>

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

¹² 7 U.S.C. § 1639o(1)

0.3% is legal hemp. Cannabis with delta-9 THC concentrations that exceed 0.3% is illegal marijuana. The concentrations of the other cannabinoids in cannabis, including THCa, are irrelevant with respect to its legal status. If the delta-9 THC concentration in a hemp product does not exceed 0.3% by dry weight, then it is not a controlled substance under federal law.

IT IS LAWFUL TO TRANSPORT HEMP AND HEMP-DERIVED PRODUCTS IN INTERSTATE COMMERCE

The interstate transfer of hemp is authorized by 7 USC § 1621 subsection 10114(b), which 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.”¹³ 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.

HEMP AND HEMP PRODUCTS ARE LAWFUL ACCORDING TO THE DEA

I. The Interim Final Rule

The DEA has expressly stated that hemp and hemp products are not controlled substances. On August 21, 2020, the DEA published its Interim Final Rule (IFR) in the federal register¹⁴. In its IFR, the DEA made it clear that:

In order to meet the definition of “hemp”, and thus qualify for the exemption from [S]chedule I, the derivative must not exceed the 0.3% delta-9 THC limit. The definition of “marihuana” continues to state that “all parts of the plant *Cannabis sativa* L.” and “every compound manufacture, salt, derivative, mixture, or preparation of such plant,” are [S]chedule I controlled substances unless they meet the definition of “hemp” (by falling below the 0.3% delta-9 THC limit on a dry weight basis)...” (Emphasis added).¹⁵

The DEA’s IFR continues by stating that the listing for “tetrahydrocannabinols” (ie, “THC”) under 21 U.S.C. 812(c) “does not include tetrahydrocannabinols in hemp”.¹⁶

The DEA’s IFR confirms that hemp products, which by definition must contain no more than 0.3% delta-9 THC on a dry weight basis, are not controlled substances in the US.

II. DEA Public Statements

¹³ <https://uscode.house.gov/statviewer.htm?volume=132&page=4914#>

¹⁴ “Implementation of the Agriculture Improvement Act of 2018”, Federal Register Volume 85, Number 163 (Friday, August 21, 2020).

¹⁵ <https://www.govinfo.gov/content/pkg/FR-2020-08-21/html/2020-17356.htm>

¹⁶ See footnote 4.

In addition to the IFR, the DEA has indicated in three public statements that cannabinoids and other cannabis materials are not controlled substances when their delta-9 THC concentrations do not exceed 0.3% on a dry weight basis:

1. DEA's First Public Statement- Town Hall Meeting

The DEA's first public statement is in the form of a video webinar called a "Town Hall with USDA and DEA" conducted by the Florida Department of Agriculture and Consumer Services (FLDACS) on June 24, 2021. In the Town Hall webinar, the DEA representative stated the following:

"[W]hat I want to say, and I'll be very, very deliberate and clear. At this time, I repeat again, at this time, per the Farm Bill, the only thing that is a controlled substance is delta-9 THC greater than 0.3% on a dry-weight basis." (emphasis added)¹⁷

2. DEA's Second Public Statement- Letter to the Alabama Board of Pharmacy

The DEA publicly addressed the legal status of the various forms of THC in hemp again in the form of a response letter to the Alabama Board of Pharmacy (ABOP) dated September 15, 2021. In this letter, Terrence L. Boos, Ph.D., Chief of the DEA's Drug and Chemical Evaluation Section of the Diversion Control Division, responds to the ABOP's request for the controlled status of delta-8 THC. After differentiating between the legal status of marijuana and hemp, both of which are botanically "cannabis sativa L", the DEA states:

"[C]annabinoids extracted from the cannabis plant that have a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis meet the definition of "hemp" and thus are not controlled under the CSA."

Additionally, the DEA states the following in a footnote:

"The Agricultural Improvement Act of 2018 (AIA), Pub. L. 115-334, § 12619, amended the CSA to remove "tetrahydrocannabinols in hemp" from control. See 21 U.S.C. § 812, Schedule I(c)(17). As noted, however, "hemp" is defined to "mean 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." 7 U.S.C. 1639o. Thus, only tetrahydrocannabinol in or derived from the cannabis plant—not synthetic tetrahydrocannabinol—is subject to being excluded from control as a "tetrahydrocannabinol[] in hemp." (emphasis added)¹⁸

¹⁷ The pertinent portions of the webinar can be viewed at this website: <https://cannabusiness.law/is-d8-from-hemp-a-controlled-substance-dea-says-no/>

¹⁸ Ibid.

3. DEA's Third Public Statement- Response Letter Regarding Seeds and Cannabis Materials

In response to an inquiry regarding the DEA's interpretation of its implementing regulations regarding cannabis the DEA stated in a letter dated January 6, 2022: “[M]aterial that is derived or extracted from the cannabis plant such as tissue culture and any other genetic material that has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis meets the definition of “hemp” and thus is not controlled under the CSA.” (emphasis added)¹⁹

These public statements by the DEA all clearly indicate that products containing no more than 0.3% delta-9 THC on a dry weight basis are lawful. CBD Plus USA's products with no more than 0.3% delta-9 THC on a dry-weight basis are not controlled substances under US federal law and conform to the Farm Bill, the CSA, and the IFR.

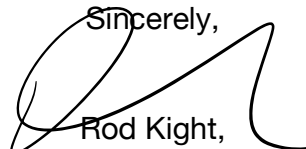
NINTH CIRCUIT COURT OF APPEALS CONFIRMS THAT HEMP PRODUCTS ARE NOT CONTROLLED SUBSTANCES

The federal Court of Appeals for the Ninth Circuit issued an opinion on hemp products, specifically products containing delta-8 THC, in the context of a trademark dispute. In its opinion, the Ninth Circuit noted that “the only statutory metric for distinguishing controlled marijuana from legal hemp is the delta-9 THC concentration level.” (emphasis added)²⁰

CONCLUSION

Harvested cannabis material, including buds and flowers, containing delta-9 THC concentrations that do not exceed 0.3% by dry weight are lawful hemp under federal law, regardless of their concentrations of THCa or any other cannabinoid. As discussed in this letter, this conclusion is supported by all three branches of the federal government: by Congress in the hemp provisions of the Farm Bill, by the Executive in the DEA's IFR and other public statements, and by the federal courts in the Ninth Circuit ruling.

Sincerely,



Rod Kight,
Attorney

¹⁹ <https://s3.documentcloud.org/documents/21580238/21-7692-shane-pennington-cannabis-seeds-tissue-genetic-material-11-18-21-signed-1.pdf>

²⁰ *AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682 (9th Cir. 2022)

THE PRODUCTS IN THIS SHIPMENT ARE 100% LEGAL TO SHIP VIA USPS AND ARE ON THE USPS APPROVED LIST (CBD products). CONFIRM COMPLIANCE WITH POSTAL INSPECTION UNIT: 877-879-2455.

Notice to law enforcement authorities: These products are INDUSTRIAL hemp flower grown in compliance with all state and federal laws. Only the Delta-9 THC level is relevant, not THC-A. As shown by the enclosed Certificate of Analysis, this hemp flower has a Delta-9 THC level on a dry weight basis below the 0.3 percent maximum level and, therefore, this flower is hemp, not marijuana, and is perfectly legal to possess and sell.

Agriculture Improvement Act of 2018.

“SEC. 297A. DEFINITIONS.

“In this subtitle:

“(1) HEMP. – 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.

SEC. 10114. INTERSTATE COMMERCE.

(b) TRANSPORTATION OF HEMP AND HEMP PRODUCTS. – 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 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.

For a copy of this shipments’ certificate of analysis, please contact labs@saylorMFG.com