

THCA and Hemp Products Challenge Cannabis Industry Regulations

In Many Markets, THCA Products Exist in a Legal Gray Area

It looks like marijuana, smells like marijuana, and when consumed, feels exactly like marijuana. But according to the businesses selling it, this isn't marijuana at all; it's hemp, rich in a compound called THCA. And it's popping up in smoke shops, gas stations, and even dedicated storefronts across the U.S.

"It's just weed, bro," said Gilbert Milam Jr., the CEO of Cookies, known as Berner, during an interview with LMC in February. "It's just weed that tests under a certain number for a certain situation at the end of the day."

That "certain number" is 0.3% delta-9 THC, the federal limit for hemp set by the 2018 Farm Bill. THCA, or tetrahydrocannabinolic acid, is a nonintoxicating precursor that converts to THC when heated. This technicality has spawned a booming market for what are essentially legal marijuana products, available even in states where delta-9 THC products remain prohibited.

The Minnesota Experiment

Minnesota recently embraced cannabis legalization with a unique model focused on small, craft businesses. But the rise of THCA is presenting an unexpected challenge to those carefully laid plans.

Leili Fatehi, partner at Blunt Strategies, the team behind Minnesota's "MN is Ready" legalization campaign, finds herself grappling with this new reality.

"The whole idea behind maintaining that robust hemp program was that it gives these smaller businesses a runway to begin generating revenue, establish their businesses, get their brand established," Fatehi explained.

Minnesota's approach to hemp regulation was initially seen as complementary to its marijuana legalization efforts. The state prohibits artificial and synthetic cannabinoids while allowing the sale of naturally derived minor cannabinoids, such as CBD, CBG, and CBN. It also permits delta-9 THC within specified potency limits.

However, THCA products exist in a legal gray area, often skirting the regulations and taxes imposed on the cannabis industry while offering similar effects to consumers.

The McConnell Irony

The impact of THCA products extends far beyond Minnesota. Charles Bachtell, CEO of Cresco Labs, voiced his apprehension during an International Cannabis Bar Association panel last month in Chicago.

“What we’ve seen in the last couple of years is a fairly irresponsible version of intoxicating hemp products being available, being promoted, being inconsistent,” he said.

Bachtell’s concerns go beyond mere market competition. He sees these products as potentially jeopardizing the hard-won progress in cannabis reform.

“For me, anything that challenges or jeopardizes the work that so many people have been at this for so many years... of getting cannabis to the appropriate legal designation, if it jeopardizes it, I have an issue with it,” he said.

Jeremy Unruh, an executive at PharmaCann, spoke to that point regarding the 2018 Farm Bill during the same panel in Chicago.

“I don’t think that Mitch McConnell, when he was trying to authorize his Kentucky tobacco farmers to replace their crops with industrial hemp, intended to create a path for intoxicating cannabinoids that can be consumed,” Unruh told the audience.

“To me, it’s about how do we fix the problem... holistically? That all goes back up to the Farm Bill at the end of the day.”

The Legal Ambiguity

The legal ambiguity surrounding THCA products extends beyond federal regulations. States are grappling with how to address these products within their own regulatory frameworks. Some, like California and Virginia, have taken steps to crack down on hemp-derived cannabinoid products altogether.

Still, enforcement has proved challenging. In New York, licensed hemp retailers have reported being caught up in raids targeting unlicensed marijuana operations. Jed M. Weiss and Joshua S. Bauchner, partners at Mandelbaum Barrett PC, recently described armed raids of licensed hemp stores under the guise of warrantless “administrative inspections.”

Adapt or Die

Adding to the complexity is the economic reality of the THCA market. Recent data from Hemp Benchmarks shows that the price gap between THCA hemp flower and regular cannabis flower has essentially disappeared.

Jonathan Rubin, CEO of Hemp Benchmarks, explained the impact to Green Market Report in May: “The proliferation of hemp-derived psychoactive products available to consumers serve as substitutes for traditional cannabis products and markets.”

That price parity is reshaping industry ideas of means to an end, with THCA products often undercutting regulated cannabis businesses that must contend with higher operational costs and taxes.

For some in the industry, the THCA boom represents an opportunity rather than a threat.

“Our viewpoint has evolved over time,” newly resigned CEO Matt Darin said during the INCBA panel. “We said, ‘Rather than prohibiting all this and just trying to say this horse needed to be put back in the barn, is there another way to view this?’”

Darin added, “The space feels kind of like the cannabis space did 10 years ago when I got involved. There’s a lot of similarities. Are there bad actors? Absolutely. But that was happening in cannabis when we got

involved as well.”

Berner’s company, Cookies, is leveraging the THCA market as part of its growth strategy.

“Look, at the end of the day, in business, bro, you have to learn how to adapt with change,” Berner said. “When there’s a loophole, ride with it. When the loophole goes away, adapt with it.”

The Road Ahead

As states grapple with legalization, the question of who benefits – and who is left behind – remains at the forefront of the debate.

“How do we have a legal and regulatory system for these products that is not picking winners and losers in fully inequitable ways?” Fatehi said.

Established vice players are paying attention as well. A push for regulation under the Alcohol and Tobacco Tax and Trade Bureau (TTB) has been seen by some as a pathway for large alcohol companies to enter the cannabis market, potentially at the expense of smaller, local businesses.

“They want all hemp-derived beverages and edibles to be regulated by TTB,” Fatehi said, referring to various hemp-aligned industry groups. “And they very explicitly told me it’s because that’s a regulatory system that the Anheuser-Buschs of the nation are already set up to deal with.”

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