

Transportation/Drug Testing: U.S. Department of Transportation Updates/Clarifies Status of Medical Marijuana/Hemp/CBD Oil



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The United States Department of Transportation (“DOT”) Office of Drug and Alcohol issued a February 18th DOT Office of Drug and Alcohol Policy and Compliance Notice (“Notice”) addressing the drug and alcohol policy for the expanding legalization by various states of:

- Medical Marijuana
- Hemp
- CBD Oil
- Recreational Marijuana

DOT had previously issued a notice making clear that its drug and alcohol testing regulation does not authorize medical marijuana under state law to be a valid medical explanation for a transportation employee’s positive drug test result.

The prior DOT notice stated in part:

It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

The February 18th Notice recognizes that the Agricultural Improvement Act of 2018 removed hemp from the definition of marijuana under the Controlled Substances Act. The legislation provided that hemp-derived products containing a concentration of up to 0.3% tetrahydrocannabinol (“THC”) are not controlled substances. However, as noted, any product, including Cannabidiol (“CBD”) products, with a concentration of more than 0.3% THC remains classified as marijuana. As a result, it is a Schedule 1 drug under the Controlled Substances Act.

DOT states that questions have arisen as to whether safety-sensitive employees can use CBD products. Safety-sensitive employees are subject to drug testing under 49 CFR Part 40. They include:

- Pilots
- School bus drivers
- Truck drivers
- Train engineers
- Transit vehicle operators
- Aircraft maintenance personnel
- Fire-armed transit security personnel

- Ship captains
- Pipeline emergency response personnel

A summary of points made by the Notice include:

1. DOT requires testing for marijuana and not CBD
2. The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the product label states (noting the Food and Drug Administration does not currently certify the levels of THC in CBD products [i.e., no Federal oversight])
3. DOT's Drug and Alcohol Testing Regulation does not authorize the use of Schedule drugs, including marijuana, for any reason. (CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result.)

The Notice also states in part:

Since the use of CBD products could lead to a positive drug test result, Department of Transportation-regulated safety-sensitive employees should exercise caution when considering whether to use CBD products.

A copy of the February 18th Notice can be downloaded [here](#).