



# U.S. Department of Transportation

Office of the Secretary of Transportation  
Office of Drug and Alcohol  
Policy and Compliance

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## **IMPACT OF HEMP LEGALIZATION ON SAFETY OVERSIGHT OF CMV DRIVERS**

**FMCSA-Motor Carrier Safety Advisory Committee (MCSAC)**

July 13, 2020



## OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE (ODAPC)

- Author and guardian of 49 CFR Part 40, throughout the Department:
  - Federal Aviation Administration (FAA)
  - **Federal Motor Carrier Safety Administration (FMCSA)**
  - Federal Railroad Administration (FRA)
  - Federal Transit Administration (FTA)
  - Pipeline and Hazardous Materials Safety Administration (PHMSA), as well as for the
  - US Coast Guard (USCG)
- ODAPC provides **intermodal coordination** and ensures a **ONE-DOT approach** to regulatory, policy, and compliance matters.



# DOT DRUG TESTING

- Drug tests detect recent drug use - NOT impairment.
  - No impairment standard for drug levels like alcohol levels.
  - Windows of detection for each drug varies, but marijuana may be detected for up to 30 days based on the employee's use and physical build.
- DOT tests for:
  - **Marijuana (THC)**
  - Cocaine (COC)
  - Amphetamines (AMP)
    - Amphetamine
    - Methamphetamine
    - MDMA
    - MDA
  - Phencyclidine (PCP)
  - Opioids (OPI)
    - Codeine
    - Morphine
    - 6-AM (heroin)
    - Hydrocodone
    - Hydromorphone
    - Oxycodone
    - Oxymorphone



# HEMP AS DEFINED BY THE 2018 FARM BILL

Agricultural Marketing Act of 1946 [amended to include] Subtitle G—  
Hemp Production

SEC. 297A. [7 U.S.C. 1639o] DEFINITIONS.

(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.**

**cannabinoids** = THC ( $\Delta$ 9-THC,  $\Delta$ 8-THC), CBD, CBV, CBN, CBC, CBG, CBL....



# HEMP VS MARIJUANA

## Hemp

- *Cannabis sativa L.* species
- Has CBD + other cannabinoids
- Has **lower** THC (cannabinoid)



## Marijuana

- *Cannabis sativa L.* species
- Has CBD + other cannabinoids
- Has **higher** THC (cannabinoid)





# BEFORE THE 2018 FARM BILL... HEMP = MARIJUANA

Controlled Substance Act (CSA) defined hemp as marijuana.

## §802. Definitions

(16) The term **"marihuana"** means **all parts of the plant *Cannabis sativa L.***, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and **every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.** Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.



# BEFORE THE 2018 FARM BILL...

## HEMP = MARIJUANA

Controlled Substance Act (CSA) defined **all** THC as Schedule I.

### §812. Schedules of controlled substances

#### Schedule I

(c) Unless specifically excepted or unless listed in another schedule, **any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances**, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(17) **Tetrahydrocannabinols**. [THC]



# 2014 FARM BILL

## Sec. 7606. Legitimacy of industrial hemp research.

- (a) In General.--Notwithstanding the Controlled Substances Act.... an institution of higher education or a State department of agriculture may grow or cultivate industrial hemp if--
- (1) the industrial hemp is grown or cultivated for **purposes of research** conducted under an **agricultural pilot program** or other **agricultural or academic research**; and
  - (2) the **growing or cultivating of industrial hemp is allowed under the laws of the State** in which such institution of higher education or State department of agriculture is located and such research occurs.
- (b) Definitions.--In this section: (2) Industrial hemp.--The term "industrial hemp" means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.





# 2018 FARM BILL

## SEC. 6. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 102(16) of the **Controlled Substances Act** (21 U.S.C. 802(16)) is **amended**—(1) by striking “(16) The” and inserting “(16)(A) Subject to subparagraph (B), the”; and (2) by striking “Such term does not include the” and **inserting** the following: “(B) **The term ‘marihuana’ does not include— “(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or “(ii) the”**

(b) TETRAHYDROCANNABINOL.—Schedule I, as set forth in section 202(c) of the **Controlled Substances Act** (21 U.S.C. 812(c)), is **amended** in subsection (c)(17) by **inserting after “Tetrahydrocannabinols” the following: “, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)”**.



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**cannabinoids** = THC ( $\Delta$ 9-THC,  $\Delta$ 8-THC), CBD, CBV, CBN, CBC, CBG, CBL....



# AFTER THE 2018 FARM BILL... HEMP ≠ MARIJUANA

Controlled Substance Act (CSA) defines ~~hemp as~~ marijuana **to exclude hemp**.

## §802. Definitions

~~(16)~~ **(16)(A)** Subject to subparagraph (B), the term "marihuana" means all parts of the plant *Cannabis sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. ~~Such term does not include the~~ **(B) The term 'marihuana' does not include hemp**, as defined in **section 297A of the Agricultural Marketing Act of 1946**; or the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.



# AFTER THE 2018 FARM BILL...

## HEMP ≠ MARIJUANA

Controlled Substance Act (CSA) defines ~~all~~ THC, **excluding those in hemp**, as Schedule I.

### §812. Schedules of controlled substances

#### Schedule I

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (17) Tetrahydrocannabinols, **except for tetrahydrocannabinols in hemp** (as defined under section 297A of the Agricultural Marketing Act of 1946).



# AFTER THE 2018 FARM BILL...

## HEMP ≠ MARIJUANA

### Hemp (aka Industrial Hemp)

- *Cannabis sativa* species
- Unscheduled by 2018 FB
- THC  $\leq$  0.3% as defined 2018 FB
- All cannabinoids extracted=legal
  - THC, psychoactive
    - = legal
  - CBD non-psychoactive
    - = legal

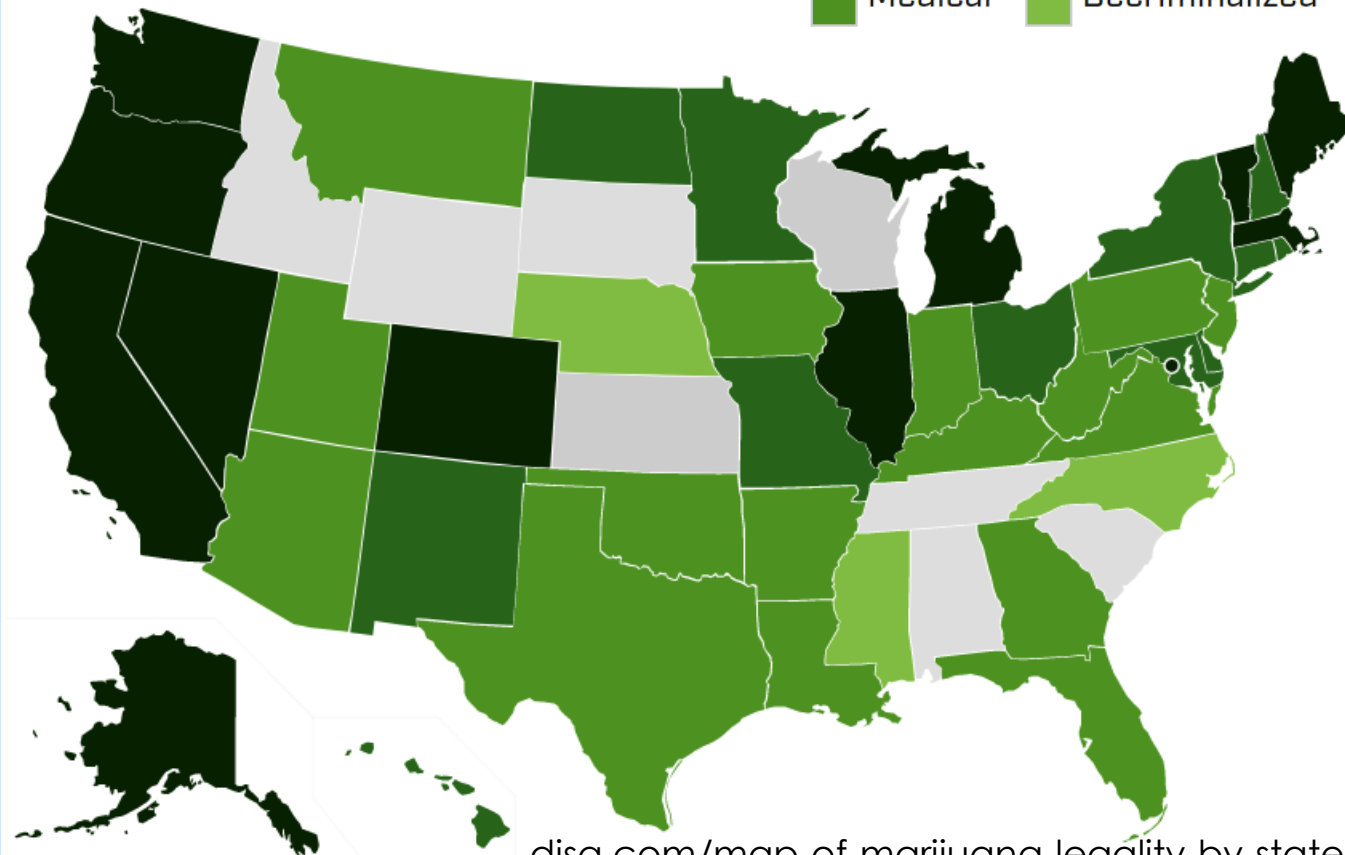
### Marijuana

- *Cannabis sativa* species
- Schedule I (CI) by CSA
- THC  $>$  0.3% by default
- All cannabinoids extracted=illegal
  - THC, psychoactive
    - = illegal - CI
  - CBD non-psychoactive
    - = illegal - CI



# MARIJUANA LEGALITY BY STATE AS OF MAY 2020

- Legalized
- Medical and Decriminalized
- Medical
- Decriminalized
- Fully illegal



[disa.com/map-of-marijuana-legality-by-state](https://disa.com/map-of-marijuana-legality-by-state)



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*Federal  
legislation*

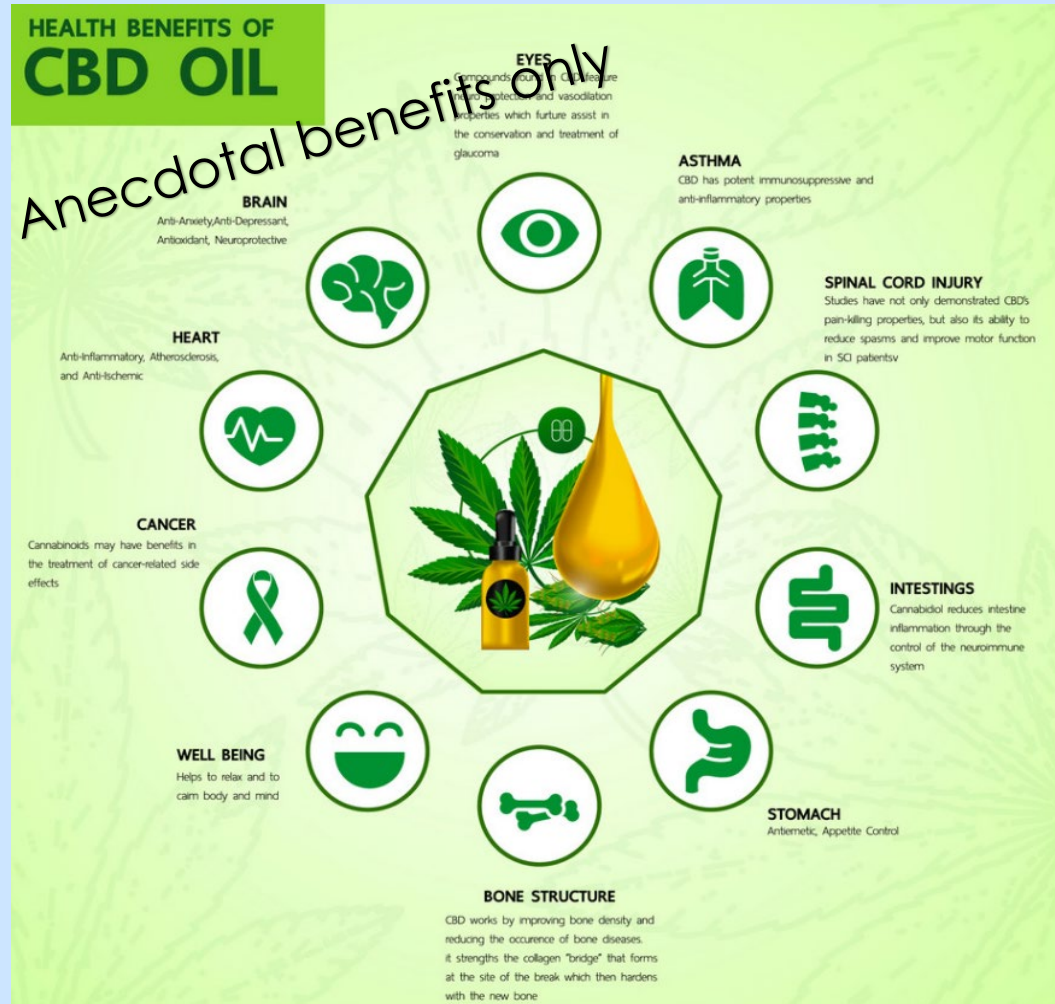
**cannabinoids** = THC ( $\Delta$ 9-THC,  $\Delta$ 8-THC), CBD, CBV, CBN, CBC, CBG, CBL....



# USA INUNDATED WITH HEMP-CBD PRODUCTS

Some CBD products are being marketed with unproven medical claims and are of unknown quality and CBD & THC quantity.

The FDA has seen only limited data about CBD safety and these data point to real risks that need to be considered before taking CBD for any reason.







# POST 2018 FARM BILL ACTION

- DOT-ODAPC immediately reached out and built new partnerships with DEA, FDA and USDA, engaged in open dialogue, and discussed the future outlook with respect to public health and safety regarding drug testing during the initial transitional period.
- ONE-DOT approach – all modal CBD calls forwarded to ODAPC.
- We recognize that the removal of hemp and its cannabinoids from the CSA definition of marijuana was self-executing, but maintain a policy of innocent ingestion or false labeling is not a valid medical excuse for a urine drug test at THCA confirmatory levels of 15ng/mL.
- DOT published **CBD Notice in 2020.**



# DOT MARIJUANA NOTICES

## **"Recreational Marijuana"** 12/3/2012 .../dot-recreational-marijuana-notice

Medical Review Officers (MROs) will not verify a drug test as negative based upon learning that the employee used "recreational marijuana" when states have passed "recreational marijuana" initiatives.

## **Medical Marijuana** 10/22/2009 .../medical-marijuana-notice

"Medical" marijuana not a legit medical prescription.

## **"CBD"** 2/18/2020 .../cbd-notice

CBD use is **not a legitimate medical explanation** for a laboratory-confirmed marijuana positive result.

**ODAPC Web Site:** [www.transportation.gov/odapc](http://www.transportation.gov/odapc)



# DOT "CBD" NOTICE

## What you need to know:

- **A positive test for THC is a positive test for “marijuana”**
- The DOT requires testing for marijuana and not CBD.
- CBD products may contain more THC than what the label lists.
- The DOT does not authorize the use of Schedule I drugs, including marijuana, for any reason and that **CBD use is not a legitimate explanation for laboratory-confirmed marijuana positive result.**
- It is unacceptable for any safety-sensitive employee subject to DOT's drug testing regulations to use marijuana.
- [www.transportation.gov/odapc/cbd-notice](http://www.transportation.gov/odapc/cbd-notice)



# DOT "CBD" NOTICE

- The Agricultural Improvement Act of 2018, Pub. L. 115-334, (Farm Bill) **removed hemp from the definition of marijuana under the Controlled Substances Act.**
- Under the Farm Bill, hemp-derived products containing a **concentration of up to 0.3% tetrahydrocannabinol (THC) are not controlled substances.**
- **THC** is the primary **psychoactive** component of marijuana.
- **Any product**, including "Cannabidiol" (CBD) products, with a concentration of **more than 0.3% THC remains classified as marijuana, a Schedule I drug under the Controlled Substances Act.**



# DOT "CBD" NOTICE

- The Food and Drug Administration (FDA) does not currently certify the **safety or** levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate.
- The **FDA has cautioned** the public that: “**Consumers should beware purchasing and using any [CBD] products.**”
- The FDA has stated: “It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement.
- Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label.
- <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>
- <https://www.fda.gov/news-events/press-announcements/fda-warns-company-marketing-unapproved-cannabidiol-products-unsubstantiated-claims-treat-cancer>



# DRUG TEST POSITIVES FROM CBD-HEMP PRODUCTS

- We are still getting calls from drivers who tested positive after using CBD-hemp products they thought were 'safe'.
- Dixie Elixirs lawsuit – trucker used CBD, tested positive, lost job. Dixie Elixirs:
  - The product did not contain THC,
  - It was legal and safe to consume,
  - Had health and wellness benefits,
  - Product was adequately tested, and
  - Would not cause a positive drug test.



# DRUG TEST POSITIVES FROM CBD-HEMP PRODUCTS

- The Department of Transportation and FMCSA want to be sure that everyone knows that “CBD” use may result in a positive test & could be detrimental to a driver’s career.
- Hemp and hemp-CBD products are legal to buy and use HOWEVER – **BUYER BEWARE!**
- "Labeling Accuracy of Cannabidiol Extracts Sold Online", 2017 study: 84 products from 31 companies analyzed
  - **21 mislabeled products**
  - **THC was detected (up to 6.43 mg/mL) in 18 samples**
  - [www.ncbi.nlm.nih.gov/pmc/articles/PMC5818782/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5818782/)



# DRUG TEST POSITIVES FROM CBD-HEMP PRODUCTS

What actions should be considered to ensure motor carriers, drivers and enforcement officials have appropriate guidance concerning hemp products?

- KNOWLEDGE IS KEY – AND THAT IF A DRIVER TESTS POSITIVE FOR MARIJUANA IT IS A POSITIVE DRUG TEST.
- The Medical Review Officer (MRO) will notify the employer who will report it to the FMCSA Clearinghouse (on record 5 years!).
- The employee will have to go through a Substance Abuse Professional (SAP) program, pass a directly observed return-to-duty drug test and at minimum 6 directly observed follow up tests in 12 months.
- The employee may have to pay for some or all of this out of pocket.





# ONGOING EFFORTS

- Meet frequently with HHS **SAMHSA** staff and Drug Testing Advisory Board (DTAB) to discuss numerous **drug testing issues**.
- Work with our **Federal and Industry Partners** on all issues related to **marijuana**.
- Identify issues that would be helpful to the safety-sensitive community regarding hemp, marijuana and CBD.

EPIDIOLEX FDA-approved CBD medication lists “**fatigue**” as an adverse reaction; and “**can cause somnolence [drowsiness] and sedation**.... Do not drive or operate machinery until [you know] whether it adversely affects their ability to drive or operate machinery”<sup>1</sup>

- Work on a **Safety Carve-Out** to ensure THC will always be tested in DOT safety-sensitive positions.

We are working to **preserve DOT’s ability to conduct testing for psychoactive drugs** in a person’s system at or above the current legal cutoffs.

<sup>1</sup>[https://www.accessdata.fda.gov/drugsatfda\\_docs/label/2018/210365lbl.pdf](https://www.accessdata.fda.gov/drugsatfda_docs/label/2018/210365lbl.pdf)

**QUESTIONS?**

**ODAPCWEBMAIL@DOT.GOV**

**202-366-DRUG**

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UPDATES**

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