

REGULATORY ALERT

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USE OF LEGALIZED MARIJUANA OR CBD OIL STRICTLY PROHIBITED UNDER U.S. DOT DRUG TESTING REGULATIONS

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The U. S. Department of Transportation (DOT) recently clarified the agency's drug and alcohol policy concerning the legalized use under state laws of CBD oil and marijuana by CDL drivers. The policy is important to petroleum marketers because it addresses how the legalized use of CBD oil and marijuana for medical and recreation purposes under state law is treated under U.S. DOT drug testing requirements for CDL drivers (49 CFR Part 40).

Both CBD oil and marijuana contain THC, a banned Schedule 1 substance under U.S DOT regulations. CBD oil derived from hemp contains 0.3% concentration of THC. THC concentrations in marijuana may range from anywhere between 5% and 30%. The U.S. DOT drug testing regulations do not authorize the use of Schedule I drugs for **any reason**. Therefore, a medical review officer (MRO) conducting driver drug tests **will not** issue a negative test result simply because the THC detected in a driver's urine specimen was from the legalized recreational use of CBD oil or marijuana. In addition, an MRO **will not** issue a negative drug test based upon information that a physician recommended that the employee use medical marijuana where states have passed medical marijuana initiatives. Instead, THC from these (or any other) source will result in a positive test for the driver.

What Do U.S. DOT Regulations Require?

- Use of THC is forbidden for a regulated driver, no matter the source. As a result, medical and recreational marijuana and CBD oils, even if legal under state law, are banned under federal law.
- Since THC is banned under DOT drug testing regulations, a medical review officer (MRO) **must not** take the medicinal use of a CBD oil into consideration when determining a drug test result.
- A positive drug test result requires the motor carrier to remove the driver from safety-sensitive functions until specific steps in the DOT return-to-duty process are successfully completed. After a positive test, the driver must:
 - Be evaluated by a substance abuse professional,

- Complete prescribed drug rehabilitation treatment, and
- Have negative results for follow-up testing.

Communicate Cautions to CDL Drivers

A driver's career may be in jeopardy if a drug screen comes back positive. To avoid any misunderstandings surrounding the use of CBD oils and legalized medical or recreation use of marijuana, employers should communicate the following to CDL drivers:

- Trace amounts of THC from CBD oils or marijuana may show up in a DOT urine specimen for many days after use,
- MROs will not accept CBD oil or marijuana as a valid medical explanation for a positive DOT drug test, and
- Enforcement authorities may consider CBD oil in a commercial vehicle as possession. Officers are unable to determine the concentration of THC in the oil, and there has been no official guidance for them to follow.