



February 20, 2020

Mike Foster
Director
Motor Vehicle Service Division
American Postal Workers Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

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Dear Mike:

As a matter of general interest, the Department of Transportation (DOT) issued a Drug and Alcohol Policy and Compliance Notice (Enclosed). The notice clarifies the DOT policy on the use of Cannabidiol (CBD) products by employees who are subject to drug testing under 49 CFR part 40.

The DOT requires testing for marijuana and not CBD. However, the use of CBD products could lead to a positive drug test result. The DOT states CBD use is not a legitimate explanation for a laboratory confirmed marijuana positive result.

Therefore, employees should use caution when considering whether to use CBD products.

If you have any questions, please contact James Lloyd at extension 3946.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rickey R. Dean", with a long horizontal flourish extending to the right.

Rickey R. Dean
Manager
Contract Administration (APWU)

Enclosure

(CA2020-68)

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE 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.

We have had inquiries about whether the Department of Transportation-regulated safety-sensitive employees can use CBD products. Safety-sensitive employees who are subject to drug testing specified under 49 CFR part 40 (Part 40) include: pilots, school bus drivers, truck drivers, train engineers, transit vehicle operators, aircraft maintenance personnel, fire-armed transit security personnel, ship captains, and pipeline emergency response personnel, among others.

It is important for all employers and safety-sensitive employees to know:

1. The Department of Transportation 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. The Food and Drug Administration (FDA) does not currently certify the 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. **i
3. The Department of Transportation's Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

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

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. This policy and compliance

notice is not legally binding in its own right and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this policy and compliance notice is voluntary only and nonconformity will not affect rights and obligations under existing statutes and regulations. Safety-sensitive employees must continue to comply with the underlying regulatory requirements for drug testing, specified at 49 CFR part 40.

February 18, 2020

ⁱ* What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD: *The FDA is working to answer questions about the science, safety, and quality of products containing cannabis and cannabis-derived compounds, particularly CBD.* <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/public-health-focus/warning-letters-and-test-results-cannabidiol-related-products>