

Federal Agency Changes on the Horizon for Hemp and Hemp-Derived Products - Including CBD

By Madison Lisotto Whalen

Two recent announcements from the federal government may indicate a loosening of restrictions regarding hemp and hemp-derived products. First, the Transportation Security Administration (“TSA”) recently announced that it will allow people to fly with certain cannabidiol (“CBD”) and hemp products. In addition, the U.S. Department of Agriculture (“USDA”) issued legal opinions regarding the interstate transportation of hemp.

TSA Update on Bringing Hemp-Derived CBD on Airplanes

TSA’s updated the ‘*What Can I Bring*’ online advisory to address carry on and checked bags on planes to state: “Possession of marijuana and certain cannabis infused products, including some CBD oil, remain illegal under federal law... Products/medications that contain hemp-derived CBD or are approved by the Food and Drug Administration (“FDA”) are legal as long as it is produced within the regulations defined by the law under the Agriculture Improvement Act 2018.”

Travelers can now bring hemp-derived CBD products so long as they are from USDA-licensed manufacturers with Tetrahydrocannabinol (“THC”) levels below 0.3%. Moreover, travelers can specifically bring Epidiolex on planes, which is a hemp-derived drug used to treat seizures in children with epilepsy, and the only cannabis related medication approved by the FDA. While TSA officers are still “required to report any suspected violations of law, including possession of marijuana and certain cannabis infused products,” they are not required to specifically search for marijuana or other illegal drugs. It is unclear how drug products, if found, would be tested for any illegal substances.

USDA Issues Hemp Legal Opinions

A second development regarding the legality of hemp came from the USDA, which recently issued the following legal opinions: [Legal Opinion on Authorities for Hemp Production](#) and [USDA Clarifies Industrial Hemp Production for Indian Tribes](#).

According to the USDA opinions, American Indian tribes and U.S. states can regulate the production and sale of hemp, including implementing regulations that are more stringent than federal law, but cannot prohibit interstate transportation or shipment of hemp authorized by the USDA program.

The Agriculture Improvement Act of 2018 (“Farm Bill”) removed nonnarcotic hemp from the federal list of Schedule I illegal drugs and allowed interstate transport of hemp. THC and CBD are both produced from hemp, though THC has psychoactive effects (and contained in higher levels in marijuana) while CBD is known to have non-psychoactive effects, thereby not giving the consumer a ‘high’. Despite the Farm Bill, several state authorities have either confiscated or attempted to confiscate shipments of hemp traveling through their states. These cases have gone to court in Idaho and West Virginia, with inconsistent rulings on the legality of interstate movement of hemp and hemp-derived products. The USDA opinions sided with the West Virginia court in concluding that States cannot stop the shipment of hemp when the hemp

is “produced under an approved State or Tribal plan or under a license issued under the [U.S. Department of Agriculture] Departmental plan... or lawfully produced under the Agricultural Act of 2014.”

Ongoing conflict between federal and state laws regarding the legality of cannabis and CBD still exists and the actions of the TSA and USDA taking steps to clarify laws and resolve conflict are helpful and necessary. CBD advocates welcomed these developments, and hope that such announcements will be influential when government agencies and courts address these types of issues in the future.

If you have questions regarding this topic, please contact any of the attorneys listed below.

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