SAMHSA
Substance Abuse and Mental Health Services Administration
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Date: July 24, 2019

To: Federal Agency Drug Program Coordinators, Federal Medical Review Officers, and Federal Partners

From: Ron Flegel, B.S., MT (ASCP), M.S.
Director, Division of Workplace Programs
Center for Substance Abuse Prevention

Subject: Marijuana, Marijuana Oils, Marijuana Infused Products and Hemp Products

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Division of Workplace Programs (DWP) oversees the Federal Drug Free-Workplace Program (DFWP) as mandated by Executive Order 12564 and Public Law 100-71. As part of the DFWP, DWP develops the Mandatory Guidelines for Federal Workplace Drug Testing Programs establishing the scientific and technical aspects of the federal agency drug testing programs. DWP is also charged with oversight of the National Laboratory Certification Program that accredits laboratories meeting Mandatory Guideline requirements and addresses issues that affect the DFWP and Regulated Industry drug testing programs.

The 2018 Agricultural Improvement Act (Farm Bill) that was signed into law on 20 December 2018 removed hemp from the definition of marijuana within the Controlled Substances Act (CSA). However, the Farm Bill states that the delta-9-tetrahydrocannabinol (THC) level in hemp-derived products must be **no greater than 0.3 percent on a dry weight basis in order to satisfy the revised definition of "hemp" provided in the Farm Bill.** If hemp-derived products exceed that THC threshold, they will not meet the definition of hemp, and therefore, could be considered a Schedule I drug.

The passage of the 2018 Farm Bill and the availability of products labelled as "containing cannabidiol (CBD)" has prompted inquiries regarding the impact of the use of these products on federal drug testing. The DFWP position on marijuana has remained unchanged since the Department of Health and Human Services issued a warning in 2017, stating that CBD (like marijuana) was classified as a Schedule I drug and that CBD products could contain THC. While the Farm Bill removed certain hemp-derived products such as CBD from CSA Schedule I, the Food and Drug Administration does not certify levels of THC in the products.

Studies have shown that some CBD products' labeling does not accurately reflect their content.[1] Cannabis based products containing a THC level greater than 0.3% on a dry weight basis do not fall under the Farm Bill's definition of hemp even if they are labeled as such. In one study, the amount of CBD in 69% of the 84 tested CBD products was inconsistent with that on the label, and some products contained unlabeled cannabinoids, including THC in amounts up to 6.4 mg/mL. As such, an employee's drug test may be positive for the THC metabolite, delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA), due to THC in the CBD product.

The CSA defines a Schedule I controlled substance as a drug or other substance with no currently accepted medical use and a high potential for abuse. Marijuana and THC remain Schedule I controlled substances under the CSA (see items (d)(23) and (31), https://www.govinfo.gov/content/pkg/CFR-2018-title21-vol9/xml/CFR-2018-title21-vol9-part1308.xml). **Under the DFWP, there is no legitimate medical explanation for a marijuana positive test result other than a verified prescription for Marinol®, Sativex® or generic equivalent.**

Federal job applicants and employees within the executive branch agencies covered by the DFWP will continue to be tested for marijuana using the established THCA test cutoffs in section 3.4 of the Mandatory Guidelines using Urine (https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs).

In summary, the passage of the 2018 Farm Bill legalized hemp-derived products under certain conditions, but it does not change the policy on marijuana use under the DFWP. Therefore, federal agencies should make every effort to inform applicants and employees of the risk that using such products may result in a positive marijuana test. SAMHSA encourages all Drug Program Coordinators, federal Medical Review Officers, and federal partners to consult with SAMHSA if there are questions.

Sincerely,

Ron Flegel

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Director
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SAMHSA

Attachments:
2012 Memorandum Addressing Recreational Marijuana
2017 Memorandum Addressing Cannabidiol (CBD)

[1] Bonn-Miller, et al., Labeling Accuracy of Cannabidiol Extracts Sold Online. JAMA. 2017 Nov 7;318(17):1708-1709. doi: 10.1001/jama.2017.11909 **AND** Freedman et al., Inadequate Regulation Contributes to Mislabeled Online Cannabidiol Products. Pediatr Neurol Briefs. 2018 Jun 18;32:3. doi: 10.15844/pedneurbriefs-32-3.