



**U. S. Department of Justice**  
Drug Enforcement Administration  
8701 Morrissette Drive  
Springfield, Virginia 22152

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*www.dea.gov*

**SEP 25 2018**

Gary Thompson  
Oregon Circuit Court Judge (Ret.)  
Board President  
Clear Alliance  
1655 SW Highland Avenue Suite 5  
P.O. Box 1991  
Redmond, Oregon 97756

Dear Judge Thompson:

This correspondence is in response to your letter dated May 10, 2018, to the Drug Enforcement Administration (DEA). In your letter, you asked the DEA to explain the laws, rules, and regulations surrounding cannabis products, cannabidiol (CBD) and Delta-9-tetrahydrocannabinols (THC). Your organization, CLEAR Alliance, whose mission is to prevent and reduce youth substance abuse and impaired driving in Oregon through fact based education, has received similar information from other sources, including the Food and Drug Administration (FDA), Oregon Liquor Control Commission, Oregon Health Authority and Oregon Department of Agriculture. The DEA apologizes for the late response to your letter.

As a general matter, it has been the DEA's longstanding policy not to provide legal advice to private parties. In that vein, we can provide the following general information. Please be advised that this is not meant to be an exhaustive list of every statutory provision or regulation that might apply to your inquiry.

Federally, marijuana is a schedule I controlled substance under the Controlled Substances Act (CSA). A substance is placed in schedule I if it has no currently accepted medical use in treatment in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse. 21 U.S.C. § 812(b)(1).

“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, 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, cake, or the sterilized seed of such plant which is incapable of germination.”  
21 U.S.C. § 802(16).

Pursuant to the DEA's “Clarification of the New Drug Code (7350) for Marijuana Extract” located at [www.DEAdiversion.usdoj.gov/schedules/marijuana/m\\_extract\\_7350.htm](http://www.DEAdiversion.usdoj.gov/schedules/marijuana/m_extract_7350.htm), cannabinoids, such as tetrahydrocannabinols, cannabiniols and CBD, are found in the parts of the cannabis plant that fall within the CSA's definition of marijuana. We have enclosed a copy of this document for

your convenience. Cannabinoids are not found in the parts of the cannabis plant that are excluded from the CSA definition of marijuana, except for trace amounts (typically, only parts per million) that may be found where small quantities of resin adhere to the surface of seeds and mature stalk. Thus, based on the scientific literature, it is not practical to produce extracts that contain more than trace amounts of cannabinoids using only the parts of the cannabis plant that are excluded from the CSA definition of marijuana, such as oil from the seeds.

“DEA’s Internal Directive Regarding the Presence of Cannabinoids in Products and Materials Made from the Cannabis Plant” (Directive) is located at [www.DEAdiversion.usdoj.gov/schedules/marijuana/dea\\_internal\\_directive\\_cannabinoids\\_05222018.htm](http://www.DEAdiversion.usdoj.gov/schedules/marijuana/dea_internal_directive_cannabinoids_05222018.htm) and a copy is enclosed for your convenience. The Directive states that products and materials that are made from the cannabis plant and which fall outside the CSA definition of marijuana (such as sterilized seeds, oil or cake made from the seeds, and mature stalks) are not controlled under the CSA. Such products may accordingly be sold and otherwise distributed throughout the United States without restriction under the CSA or its implementing regulations. The mere presence of cannabinoids is not itself dispositive as to whether a substance is within the scope of the CSA; the dispositive question is whether the substance falls within the CSA definition of marijuana.

The Controlled Substances Import and Export Act, incorporates the schedules of the CSA. *See generally* 21 U.S.C. §§ 951-971. Accordingly, any product that the U.S. Customs and Border Protection determines to be made from the cannabis plant but which falls outside the CSA definition of marijuana may be imported into the United States without restriction under the Controlled Substances Import and Export Act. The same considerations apply to exports of such products from the United States, provided further that it is lawful to import such products under the laws of the country of destination.

You may obtain additional information regarding the Diversion Control Division at [www.DEAdiversion.usdoj.gov](http://www.DEAdiversion.usdoj.gov). If there are any further questions regarding this issue, please contact the Policy Section at (202) 307-7297.

Sincerely,



Keith Brown  
Deputy Assistant Administrator  
Diversion Control Division

Enclosures



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## Marijuana

### DEA Internal Directive Regarding the Presence of Cannabinoids in Products and Materials Made from the Cannabis Plant

(May 22, 2018)

In 2004, the U.S. Court of Appeals for the Ninth Circuit enjoined DEA from enforcing certain regulations with respect to tetrahydrocannabinol (THC). See *Hemp Industries Ass'n v. DEA*, 357 F.3d 1012 (9th Cir. 2004). The government did not seek Supreme Court review of that decision. In response to various inquiries, DEA hereby issues to DEA personnel the following internal directive on how to carry out their duties in light of the Ninth Circuit's decision.

The Ninth Circuit enjoined enforcement of what is now **21 C.F.R. § 1308.11(d)(31)** (drug code 7370) with respect to products that are excluded from the definition of marijuana in the Controlled Substances Act (CSA). DEA thus does not enforce that provision as to such products.

Consistent with the Ninth Circuit's decision, DEA does not enforce **21 C.F.R. § 1308.35**.

Products and materials that are made from the cannabis plant and which fall outside the CSA definition of marijuana (such as sterilized seeds, oil or cake made from the seeds, and mature stalks) are not controlled under the CSA. Such products may accordingly be sold and otherwise distributed throughout the United States without restriction under the CSA or its implementing regulations. The mere presence of cannabinoids is not itself dispositive as to whether a substance is within the scope of the CSA; the dispositive question is whether the substance falls within the CSA definition of marijuana.

The Controlled Substances Import and Export Act incorporates the schedules of the CSA. See generally **21 U.S.C. §§ 951-971**. Accordingly, any product that the U.S. Customs and Border Protection determines to be made from the cannabis plant but which falls outside the CSA definition of marijuana may be imported into the United States without restriction under the Controlled Substances Import and Export Act. The same considerations apply to exports of such products from the United States, provided further that it is lawful to import such products under the laws of the country of destination.

This directive does not address or alter DEA's previous statements regarding the drug code for marijuana extract and regarding resin. See **Establishment of a New Drug Code for Marijuana Extract**, 81 Fed. Reg. 90194 (Dec. 14, 2016); **Clarification of the New Drug Code (7350) for Marijuana Extract**. As DEA has previously explained, the drug code for marijuana extract extends no further than the CSA does, and it thus does not apply to materials outside the CSA definition of marijuana.

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## Marijuana

### Clarification of the New Drug Code (7350) for Marijuana Extract

Note regarding this rule – In light of questions that the Drug Enforcement Administration has received from members of the public following the publication of the **Final Rule establishing a new Controlled Substance Code Number (drug code) for marijuana extract**, DEA makes the following clarification:

- The new drug code (7350) established in the Final Rule does not include materials or products that are excluded from the definition of marijuana set forth in the Controlled Substances Act (CSA).<sup>1</sup>
- The new drug code includes only those extracts that fall within the CSA definition of marijuana.
- If a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360).

As explained in the Final Rule, the creation of this new drug code was primarily intended to give DEA more precise accounting to assist the agency in carrying out its obligations to provide certain reports required by U.S. treaty obligations. Because the Final Rule did not add any substance to the schedules that was not already controlled, and did not change the schedule of any substance, it was not a scheduling action under **21 U.S.C. §§ 811 and 812**.

The new drug code is a subset of what has always been included in the CSA definition of marijuana. By creating a new drug code for marijuana extract, the Final Rule divides into more descriptive pieces the materials, compounds, mixtures, and preparations that fall within the CSA definition of marijuana. Both drug code 7360 (marijuana) and new drug code 7350 (marijuana extract) are limited to that which falls within the CSA definition of marijuana.

Because recent public inquiries that DEA has received following the publication of the Final Rule suggest there may be some misunderstanding about the source of cannabinoids in the cannabis plant, we also note the following botanical considerations. As the scientific literature indicates, cannabinoids, such as tetrahydrocannabinols (THC), cannabinols (CBN) and cannabidiols (CBD), are found in the parts of the cannabis plant that fall within the CSA definition of marijuana, such as the flowering tops, resin, and leaves.<sup>2</sup> According to the scientific literature, cannabinoids are not found in the parts of the cannabis plant that are excluded from the CSA definition of marijuana, except for trace amounts (typically, only parts per million)<sup>3</sup> that may be found where small quantities of resin adhere to the surface of seeds and mature stalk.<sup>4</sup> Thus, based on the scientific literature, it is not practical to produce extracts that contain more than trace amounts of cannabinoids using only the parts of the cannabis plant that are excluded from the CSA definition of marijuana, such as oil from the seeds. The industrial processes used to clean cannabis seeds and produce seed oil would likely further diminish any trace amounts of cannabinoids that end up in the finished product. However, as indicated above, if a product, such as oil from cannabis seeds, consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360), even if it contained trace amounts of cannabinoids.<sup>5</sup>

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<sup>1</sup> The CSA states: "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." **21 U.S.C. § 802(16)**.

<sup>2</sup> H. Mölleken and H. Hussman. Cannabinoid in seed extracts of *Cannabis sativa* cultivars. *J. Int. Hemp Assoc.* 4(2): 73-79 (1997).

<sup>3</sup> See *id.*; see also S. Ross et al., GC-MS Analysis of the Total Δ9-THC Content of Both Drug- and Fiber-Type Cannabis Seeds, *J. Anal. Toxic.*, Vol. 24, 715-717 (2000).

<sup>4</sup> H. Mölleken, *supra*.

<sup>5</sup> Nor would such a product be included under drug code 7370 (tetrahydrocannabinols). See *Hemp Industries Association v. DEA*, 357 F.3d 1012 (9th Cir. 2004) (*Hemp II*). However, as the Ninth Circuit stated in *Hemp II*, "when Congress excluded from the definition of marijuana 'mature stalks of such plant, fiber . . . , [and] oil or cake made from the seeds,' it also made an exception to the exception, and included 'resin extracted from' the excepted parts of the plant in the definition of marijuana, despite the stalks and seed exception." *Id.* at 1018. Thus, if an extract of cannabinoids were produced using extracted resin from any part of the cannabis plant (including the parts excluded from the CSA definition of marijuana), such an extract would be included in the CSA definition of marijuana.