



Rod Kight <rod@kightlaw.com>

CBP position regarding CBD oil

3 messages

Rod Kight <Rod@kightlaw.com>
To: YOLANDA.CHOATES@cbp.dhs.gov
Cc: Ashley Kight <ashley@kightlaw.com>, Philip Snow <philip@kightlaw.com>

Wed, May 1, 2019 at 10:08 PM

Ms. Choates,

This email is to follow up on our conversation of May 1 regarding CBD oil. You asked me to send you questions in writing. My questions are below. I appreciate you taking the time to respond.

As you recall, I reached out for clarification and information regarding several comments recently made to media outlets by US Customs and Border Patrol (CBP) regarding cannabidiol (CBD) oil. Specifically, the comments at issue are: "*One single, small amount of CBD oil that you thought was cool to take on a trip with you, could result in life-changing effects[.]*" and "*CBD oil is considered a controlled substance under U.S. Federal law. Travelers found in possession of controlled substances at U.S. ports of entry can face arrest, seizures, fines, penalties or denied entry.*"

During our conversation you stated that CBD oil containing tetrahydrocannabinol (THC) is a controlled substance under federal law. You further stated that this is the official position of CBP, which is "*still following federal law.*" Please let me know if I have misstated any of your comments and/or the official position of CBP with respect to these matters.

I direct your attention to [Section 297A\(1\)](#) and [Section 12619\(a\)\(2\) and \(b\)](#) of the Agricultural Improvement Act of 2018 (2018 Farm Bill), both of which are copied and pasted below.

Here are my questions:

1. Given the above statutory references, does CBP contend that hemp extracts and cannabinoids, including CBD and THC, are controlled substances under federal law?
2. If the answer to question 1 is "yes", what is the basis for your answer?
3. Can you provide a copy of a document and/or a link that sets forth the CBP policy regarding hemp, cannabinoids and extracts of hemp, and hemp products?

Thank you.

Sincerely,

Rod Kight

Statutory references:

2018 Farm Bill, Section 297A(1). Hemp. The term hemp means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

*2018 Farm Bill, Section 12619. Conforming changes to Controlled Substances Act.
(a)(2)(B)(i) The term marijuana does not include—
(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 194[.]*

2018 Farm Bill, Section 12619. Conforming changes to Controlled Substances Act.

(b) Tetrahydrocannabinol.- Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)(17) by inserting after Tetrahydrocannabinols the following: , except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946).

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**Rod Kight**

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CHOATES, YOLANDA <YOLANDA.CHOATES@cbp.dhs.gov>

Fri, May 3, 2019 at 1:01 PM

To: Rod Kight <Rod@kightlaw.com>

Cc: Ashley Kight <ashley@kightlaw.com>, Philip Snow <philip@kightlaw.com>

Good Morning, Mr. Kight

Thank you for reaching out U.S. Customs and Border Protection.

Please see CBP's statement with regard to your inquiry.

Marijuana and marijuana products are considered controlled substances under U.S. federal law. Travelers found in possession of controlled substances at U.S. ports of entry can face arrest, seizures, fines, penalties or denied entry. Requirements for international travelers wishing to enter the United States are governed by and conducted in accordance with U.S. federal law, which supersedes state laws. Travelers should understand the requirements for travelling internationally and are responsible for understanding the laws of the countries they are visiting and or stopping in. Travelers can contact the State Department for more advice on traveling internationally.

As a law enforcement agency, CBP works closely with other law enforcement agencies – if prosecution is not accepted at either the local, state or federal level, travelers would face seizures, fines, penalties or could be denied entry.

Signed into law December 20, 2018, the Agriculture Improvement Act of 2018 ("2018 Farm Bill") contains several important changes regarding agricultural production and trade of the Cannabis Sativa L. plant and products derived from it. The 2018 Farm Bill amended the Agriculture Marketing Act of 1946 to define "hemp" to include any part of the Cannabis Sativa L. plant with a tetrahydrocannabinol (THC) concentration of not more than 0.3% on a dry weight basis. The 2018 Farm Bill also specifically excludes hemp from the definition of marijuana in the Controlled Substances Act ("CSA"), however marijuana– i.e. Cannabis Sativa L. with greater than 0.3% THC –remains a Schedule 1 controlled substance under the U.S Department of Justice's Drug Enforcement Agency's jurisdiction.

In light of these changes, CBP is working closely with its Partner Government Agencies (PGAs) that have regulatory purview over Cannabis Sativa L. and its by-products (around and beyond the CSA) to assess the policy and regulatory changes and verify all importation requirements that will be necessary as a result of the 2018 Farm Bill. CBP administers and enforces importation laws and regulations on behalf of its PGAs, and coordinates with them actively at the border.

Until this interagency regulatory process is complete, and updated requirements are finalized and disseminated, existing importation protocols and trade filing guidance will remain in place. The interagency partners that may need to change their regulations or refresh import requirements include: DOJ-DEA, FDA, UDSA-APHIS, U DA-AMS and EPA.

Thanks again,

Yolanda

Yolanda Choates

Public Affairs Specialist

U.S. Customs and Border Protection

Office:713-387-7360 Cell:202-553-0935



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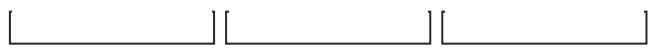
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Rod Kight <Rod@kightlaw.com>

Fri, May 3, 2019 at 5:08 PM

To: "CHOATES, YOLANDA" <YOLANDA.CHOATES@cbp.dhs.gov>

Cc: Ashley Kight <ashley@kightlaw.com>, Philip Snow <philip@kightlaw.com>

Thank you, Ms. Choates. While I appreciate the response, it did not directly answer my questions. Both you and Mr. Hunt said that CBD oil is a controlled substance. My understanding is that hemp-derived CBD oil has been seized and that at least one, and possibly more, individuals have been arrested at DFW International Airport for carrying hemp derived CBD oil. Given your response, please answer these clarifying questions:

1. Is it the position of CBP that hemp extracts and cannabinoids, including CBD and THC, are controlled substances under federal law?
2. If the answer to #1 is "yes", then please provide the legal basis for CBP's position.
3. If the answer to #2 is "no", then please advise whether CBP will return the hemp derived CBD oil that it has seized, dismiss pending charges that arose from possession of hemp derived CBD oil, and/or cease taking enforcement action with respect to hemp derived CBD oil.

Thank you.

Rod

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