

# The National Security Implications of Protecting Legal Hemp Access in the United States

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## **Executive Summary**

The cannabis plant, and its derivative products, are legally categorized as hemp (<0.3% D9 THC, federally legal & unscheduled) and marijuana (>0.3% D9 THC, federally illegal & Schedule 1). While federal policy currently prohibits active duty service members & government employees from using hemp, this prohibition does not extend to retired service members and government employees.

Currently, many retired service members & government employees who retain their security clearances use a hemp-derived cannabinoid product, from CBD to D9 THC and other THC isomers. Making hemp-derived cannabinoid products illegal, or reducing their accessibility, will at some margin result in more private citizens choosing to use federally illegal marijuana products and hence, reducing the number of individuals who hold national security clearances. This undermines US national security in a volatile global threat environment.

Additionally, restrictions on legal hemp or a shift to marijuana use impacts military readiness two ways. First, it impacts recruitment to the armed services, impeding scalability in the case of a surprise conflict. Second, it impedes mobilization of the Inactive Ready Reserve (IRR), which consists of over a million inactive reservists (as of Nov. 2021). The IRR is the primary contingency plan for DOD personnel in a surprise conflict.

Congress should act to regulate hemp-derived cannabinoids through the FDA and take other actions to ensure that those who hold security clearances do not have to choose between their health and well-being and using these federal authorized products. State governments should ensure hemp-derived cannabinoid products are age-gated and accessible to adults for health and wellness purposes.

## Analysis

### Use of hemp products

In December 2023, the Journal of the American Medical Association (JAMA) published a survey report<sup>1</sup> “representing 96% of US households” showing that “21.1% reported past-year CBD use compared with 11.9%, 5.2%, and 4.4% for Δ8-THC, CBG, and CBN, respectively; 25.2% of participants reported past-year use of any emerging cannabinoid.”

In other words, 1 in 8 survey respondents reported use of Delta-8 THC and 1 in 4 reported use of any emerging cannabinoid. Extrapolating to the American population, this survey implies that in the neighborhood of 40 million Americans used a Delta-8 THC product and nearly 84 million Americans used a CBD product in 2022.

### Statistics on Security Clearances

A October 2023 Congressional Research Service report<sup>2</sup> states:

According to the Office of the Director of National Intelligence, National Counterintelligence and Security Center (ODNI-NCSC), approximately 4.2 million<sup>24</sup> individuals held security clearances (of any level) as of October 1, 2019.<sup>25</sup> This includes 2,859,877 security clearances at the confidential or secret levels and 1,384,060 security clearances at the top-secret level.

### Federal Policy Regarding Drug Use & Security Clearances

A December 2021 memo<sup>3</sup> from Avril Haines, the Security Executive Agent (SecEA in the Director of National Intelligence (DNI)) for the US Government (USG) cites guidelines in the June 2017 Security Executive Agent Directive 4 memo<sup>4</sup> (SEAD 4) regarding illegal drug use:

Of particular note, under policy set forth in SEAD 4<sup>1</sup> s adjudicative guidelines, the illegal use or misuse of controlled substances can raise security concerns about an individual's

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<sup>1</sup> Past-Year Use Prevalence of Cannabidiol, Cannabigerol, Cannabinol, and Δ8-Tetrahydrocannabinol Among US Adults, *JAMA Netw Open*. 2023;6(12):e2347373. doi:10.1001/jamanetworkopen.2023.47373

<sup>2</sup> Congressional Research Service. (2023). *Security Clearance Process: Answers to Frequently Asked Questions*. <https://crsreports.congress.gov/product/pdf/R/R43216>

<sup>3</sup> US Director of National Intelligence. (2021). *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. [https://www.dni.gov/files/NCSC/documents/Regulations/12-21-21\\_Memo\\_SecEA\\_Clarifying\\_Guidance\\_re\\_Marijuana\\_21-01529\\_U\\_SIGNED-FINAL.pdf](https://www.dni.gov/files/NCSC/documents/Regulations/12-21-21_Memo_SecEA_Clarifying_Guidance_re_Marijuana_21-01529_U_SIGNED-FINAL.pdf)

<sup>4</sup> US Director of National Intelligence. (2017). *Security Executive Agent Directive 4*. <https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-4-Adjudicative-Guidelines-U.pdf>

reliability and trustworthiness to access classified information or to hold a sensitive position, as well as their ability or willingness to comply with laws, rules, and regulations (Reference B, Guideline H). Drug involvement may raise similar concerns about personal and criminal conduct (Reference B, Guidelines E, J). Thus, consistent with these references, SecEA guidance (Reference G) indicates that disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position. Should there be a change to federal law concerning marijuana use, the SecEA may reexamine SEAD 4 and determine whether updated guidance is appropriate.

While the Haines memo goes on to acknowledge that “the Agricultural Improvement Act of 2018 excluded hemp from the definition of marijuana within the Controlled Substances Act”, it points out that “the Federal Drug Administration does not certify levels of THC in CBD products, so the percentage of THC cannot be guaranteed” and “there is a risk that using these products may nonetheless cause sufficiently high levels of THC to result in a positive marijuana test”.

## **2024 Administrative Law Precedent on Hemp Use**

A January 2024 decision<sup>5</sup> by Department of Defense (DOD) Administrative Law Judge (ALJ) Braden Murphy, is explicative of how this process has played out in practice:

Between about March 2021 and late September 2023, Applicant used cannabidiol (CBD) products for medicinal purposes, under his state’s medical marijuana program, to treat chronic back pain. Applicant testified credibly, and provided sufficient supporting documentary evidence to establish, that the CBD products he used contained less than 0.2% delta-9 tetrahydrocannabinol (THC), which is below the 0.3% THC content considered to meet the legal definition of marijuana. Therefore, the CBD products Applicant took were not illegal under federal law, whether or not he had a clearance at the time. Further, Applicant has ceased using the product, and is now on an effective prescription regimen for his back pain, under doctors’ care, and has no intentions to resume CBD use in the future. I therefore conclude that Applicant provided sufficient evidence to rebut security concerns under Guideline H (drug involvement and substance misuse). Applicant’s eligibility for continued access to classified information is granted.

Further, Judge Murphy concluded (emphasis mine):

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<sup>5</sup> ISCR Case No. 23-01530 (B.M. Murphy, Jan. 23, 2024).  
<https://doha.ogc.osd.mil/Industrial-Security-Program/Industrial-Security-Clearance-Decisions/ISCR-Hearing-Decisions/2024-ISCR-Hearing/FileId/213512/i>

Applicant has established by sufficient evidence that the CBD products he used for medical purposes do not meet the legal definition of marijuana under federal law, as defined in the 2021 DNI memo. Notwithstanding his admission to the conduct, **his use of the products did not establish disqualifying conditions under Guideline H.** Overall, the record evidence leaves me without questions or doubts as to his judgment, trustworthiness, reliability, or eligibility for a security clearance.

## **Conclusion**

It is now precedential that using a federally legal hemp product does not “establish disqualifying conditions” for holding a security clearance. Congress should act to further clarify policies regarding the use of hemp and protect individuals holding security clearances from having to surmount these legal hurdles to retain their security clearances. State governments should recognize that hemp products are used widely and consider that restrictions on their state legality & access undermine the capacity of the USG to recruit and retain private individuals for national security purposes.