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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

AIR-LC
21.0040

February 9, 2021

Clifton Otto, MD
Akamai Cannabis Clinic
3615 Harding Avenue, Suite 304
Honolulu, Hawaii 96816

Dear Dr. Otto:

Subject: Interisland Sample Transport

Thank you for your letter dated January 11, 2021, regarding the air transportation of cannabis samples. Although there have been some laws passed in the State of Hawaii pertaining to cannabis, changes have not been made on the federal level.

By federal standards, the Drug Enforcement Agency (DEA) still lists marijuana (cannabis) as a Schedule I drug and is prohibited (Attachment-1). Federal Aviation Administration (FAA) guidelines states that marijuana is still illegal under federal law and transporting the substance on an aircraft could result in the pilot's loss of his flying certificate (Attachment-2). Although TSA does not screen for marijuana, when found they will call for law enforcement intervention.

Hawaii State law does provide guidelines on limited and specifically defined interisland transportation of cannabis, but clearly states that the law does not apply outside of the jurisdictional limits of the State (Attachment-3).

Based on the information gathered for this response, the Department of Transportation will support the current federal and state laws and rules pertaining to this matter.

Sincerely,

JADE T. BUTAY
Director of Transportation

Attachments:
1) DEA Drug Scheduling
2) FAA Marijuana Can't Fly
3) State of Hawaii HRS §329-122 Medical use of cannabis; conditions of use

Adobe Sign Transaction Number: CBJCHBCAABAAToTMNPeHq9AIFMmwzyJvr_mNHJIwjUbh

Drug Scheduling

Drug Schedules

Drugs, substances, and certain chemicals used to make drugs are classified into five (5) distinct categories or schedules depending upon the drug's acceptable medical use and the drug's abuse or dependency potential. The abuse rate is a determinate factor in the scheduling of the drug; for example, Schedule I drugs have a high potential for abuse and the potential to create severe psychological and/or physical dependence. As the drug schedule changes-- Schedule II, Schedule III, etc., so does the abuse potential-- Schedule V drugs represents the least potential for abuse. A Listing of drugs and their schedule are located at Controlled Substance Act (CSA) Scheduling or CSA Scheduling by Alphabetical Order. These lists describes the basic or parent chemical and do not necessarily describe the salts, isomers and salts of isomers, esters, ethers and derivatives which may also be classified as controlled substances. These lists are intended as general references and are not comprehensive listings of all controlled substances.

Please note that a substance need not be listed as a controlled substance to be treated as a Schedule I substance for criminal prosecution. A controlled substance analogue is a substance which is intended for human consumption and is structurally or pharmacologically substantially similar to or is represented as being similar to a Schedule I or Schedule II substance and is not an approved medication in the United States. (See 21 U.S.C. §802(32)(A) for the definition of a controlled substance analogue and 21 U.S.C. §813 for the schedule.)

Schedule I

Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Some examples of Schedule I drugs are:

heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote

Schedule II

Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are:

Combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin

Schedule III

Schedule III drugs, substances, or chemicals are defined as drugs with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs but more than Schedule IV. Some examples of Schedule III drugs are:

Products containing less than 90 milligrams of codeine per dosage unit (Tylenol with codeine), ketamine, anabolic steroids, testosterone

ATTACHMENT #1

Schedule IV

Schedule IV drugs, substances, or chemicals are defined as drugs with a low potential for abuse and low risk of dependence. Some examples of Schedule IV drugs are:

Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien, Tramadol

Schedule V

Schedule V drugs, substances, or chemicals are defined as drugs with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes. Some examples of Schedule V drugs are:

cough preparations with less than 200 milligrams of codeine or per 100 milliliters (Robitussin AC), Lomotil, Motofen, Lyrica, Parepectolin

Alphabetical listing of Controlled Substances

United States Drug Enforcement Administration

DEA.gov is an official site of the U.S. Department of Justice

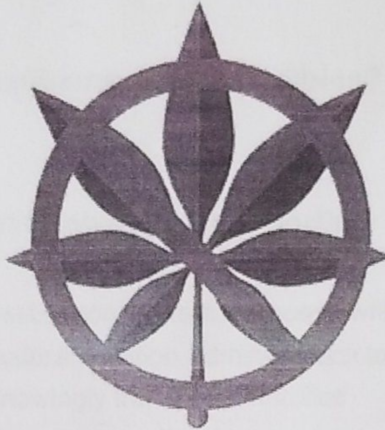
Get Updates

Contact the Webmaster

Federal Aviation Administration

Marijuana Can't Fly

The Federal Aviation Administration (FAA) is issuing an urgent warning to pilots who may be considering transporting marijuana aboard their aircraft. While a number of states have legalized marijuana for medicinal or personal use, federal law prohibits the knowing transportation of marijuana on aircraft.



Know the Rules and Penalties

Pilots and aircraft owners involved in transporting marijuana face severe penalties for violating the federal prohibitions.

Federal law requires the Federal Aviation Administration to permanently revoke the certificates of pilots who knowingly transport controlled substances – including quantities of marijuana amounting to more than simple possession – on aircraft. Federal law also requires the FAA to revoke the registrations of aircraft used for that purpose for five years.

In addition, FAA regulations authorize the agency to revoke the certificates (PDF) of people who knowingly transport aboard aircraft even small quantities of marijuana that amount to simple possession.

The FAA does not want pilots or aircraft owners to face these severe penalties due to confusion between what is allowed under state law and what remains prohibited under federal law.

The Bottom Line

Even if marijuana possession or cultivation is legal in a state, it is illegal under federal law to use an aircraft to transport marijuana to, from, or within that state. If you violate the federal prohibitions, you can lose your pilot certificate and your aircraft.

ATTACHMENT #2

- Download a poster for Marijuana Can't Fly (PDF)

Q&A

Q. Why can't a pilot transport marijuana in a state where possession and use of the substance is legal?

A. Marijuana continues to be a federally banned substance. The Federal Aviation Administration regulates both pilots, who must follow federal law and FAA regulations, and aircraft.

Q. Does this law pertain to all forms of marijuana such as edibles?

A. Yes.

Q. What happens to pilots who are caught knowingly transporting marijuana?

A. The FAA will investigate the case and, if the investigation warrants, proceed with an enforcement action. Federal law requires the Federal Aviation Administration to permanently revoke the certificates of pilots who knowingly transport controlled substances on aircraft, including quantities of marijuana amounting to more than simple possession.

Q. Does this apply only to private pilots or airline pilots too?

A. It applies to all pilots.

Q: What about airlines? What penalties could they face?

A. The FAA is required to revoke for five years the registrations of a U.S. registered aircraft that the owner or operator knowingly uses to transport controlled substances. So an airline would face the loss of the aircraft it used for the operation for five years.

Q. Is this a new policy?

A. No. Longstanding federal laws address this issue.

Q: What is "simple possession?"

A. Federal law doesn't assign a weight threshold to "simple possession." A court would determine whether a quantity of marijuana is simple possession based on the totality of circumstances, including but not limited to the amount of the substance and intent of the person who possesses it.

Q. Times and attitudes are changing. Is there a chance that the FAA could change this law in the future?

A. Congress makes federal laws. Congress would have to pass any new law and the president would have to sign it.

Q. What about passengers who bring marijuana aboard planes? What penalties could they face?

A. FAA regulations pertaining to carrying prohibited substances aboard aircraft do not apply to passengers. However, federal law involving carrying banned substances aboard aircraft applies not only people serving as airmen on aircraft but also to people with airman certificates who are passengers and are knowingly transporting aboard aircraft controlled substances, including quantities of marijuana amounting to more than simple possession.

Page last modified: October 29, 2020 4:02:47 PM EDT

This page was originally published at: https://www.faa.gov/pilots/transporting_marijuana/

§329-122 Medical use of cannabis; conditions of use.
(a) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;

(2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of cannabis would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of cannabis possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of cannabis to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

(A) Allow the qualifying patient's medical use of cannabis;
(B) Serve as the qualifying patient's primary caregiver; and
(C) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying patient.

(c) Notwithstanding any law to the contrary, the medical use of cannabis within the State by a qualifying out-of-state patient aged eighteen years or older legally authorized to use cannabis for medical purposes in another state, a United States territory, or the District of Columbia shall be permitted only if the qualifying out-of-state patient:

(1) Provides to the department of health a valid medical use of cannabis card with an explicit expiration date that has not yet passed from the issuing jurisdiction and a valid photographic identification card or driver's license issued by the same jurisdiction;

(2) Attests under penalty of law pursuant to section 710-1063 that the condition for which the qualifying out-of-state patient is legally authorized to use cannabis for medical purposes is a debilitating medical condition as defined in section 329-121;

(3) Provides consent for the department of health to obtain information from the qualifying out-of-state patient's certifying medical provider and from the entity that issued the medical

ATTAchment #3

cannabis card for the purpose of allowing the department of health to verify the information provided in the registration process;

(4) Pays the required fee for out-of-state registration to use cannabis for medical purposes;

(5) Registers with the department of health pursuant to section 329-123.5 to use cannabis for medical purposes;

(6) Receives a medical cannabis registry card from the department of health; and

(7) Abides by all laws relating to the medical use of cannabis, including not possessing an amount of cannabis that exceeds an adequate supply.

(d) Notwithstanding any law to the contrary, the medical use of cannabis by a qualifying out-of-state patient under eighteen years of age shall only be permitted if:

(1) The caregiver of the qualifying out-of-state patient provides the information required pursuant to subsection (c); and

(2) The caregiver of the qualifying out-of-state patient consents in writing to:

(A) Allow the qualifying out-of-state patient's medical use of cannabis;
(B) Undertake the responsibility for managing the well-being of the qualifying out-of-state patient who is under eighteen years of age with respect to the medical use of cannabis; and
(C) Control the acquisition of the cannabis, the dosage, and the frequency of the medical use of cannabis by the qualifying out-of-state patient who is under eighteen years of age.

(e) The authorization for the medical use of cannabis in this section shall not apply to:

(1) The medical use of cannabis that endangers the health or well-being of another person;

(2) The medical use of cannabis:

(A) In a school bus, public bus, or any moving vehicle;
(B) In the workplace of one's employment;
(C) On any school grounds;
(D) At any public park, public beach, public recreation center, recreation or youth center; or
(E) At any other place open to the public; provided that a qualifying patient, primary caregiver, qualifying out-of-state patient, caregiver of a

qualifying out-of-state patient, or an owner or employee of a medical cannabis dispensary licensed under chapter 329D shall not be prohibited from transporting cannabis or any manufactured cannabis product, as that term is defined in section 329D-1, in any public place; provided further that the cannabis or manufactured cannabis product shall be transported in a sealed container, not be visible to the public, and shall not be removed from its sealed container or consumed or used in any way while it is in the public place; and

(3) The use of cannabis by a qualifying patient, parent, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient, for purposes other than medical use permitted by this part.

(f) For the purposes of this section, "transport" means the transportation of cannabis, usable cannabis, or any manufactured cannabis product between:

(1) A qualifying patient and the qualifying patient's primary caregiver;

(2) A qualifying out-of-state patient under eighteen years of age and the caregiver of a qualifying out-of-state patient;

(3) The production centers and the retail dispensing locations under a dispensary licensee's license; or

(4) A production center, retail dispensing location, qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and a certified laboratory for the purpose of laboratory testing; provided that a qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient may only transport up to one gram of cannabis per test to a certified laboratory for laboratory testing and may only transport the product if the qualifying patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient:

(A) Secures an appointment for testing at a certified laboratory;

(B) Obtains confirmation, which may be electronic, that includes the specific time and date of the appointment and a detailed description of the product and amount to be transported to the certified laboratory for the appointment; and

(C) Has the confirmation, which may be electronic, available during transport.

For purposes of interisland transportation, "transport" of cannabis, usable cannabis, or any manufactured cannabis

product, by any means is allowable only between a production center or retail dispensing location and a certified laboratory for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. Allowable transport pursuant to this section does not include interisland transportation by any means or for any purpose between a qualified patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient and any other entity or individual, including an individual who is a qualified patient, primary caregiver, qualifying out-of-state patient, or caregiver of a qualifying out-of-state patient. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3; am L 2015, c 241, §7; am L 2016, c 230, §8; am L 2017, c 41, §3 and c 170, §2; am L 2018, c 116, §5]

Revision Note

"Marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

Law Journals and Reviews

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under subsection [(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).