



Overview of Cannabis Laws

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Overview

- Legal classifications
- Historical overview
- Controlled Substances Act and DEA Actions
- Recent federal developments
- Recent state developments
- What does it all mean?



Legal Classifications of Cannabis

- Industrial Hemp (including therapeutic?)
- Medical Marijuana
- Recreational Use



Historical Overview

- 1937 Marihuana Tax Act- defined hemp as a narcotic drug, required a federal permit to produce and required a tax stamp
- 1943- U.S. production reaches 150 million pounds (140.7 million pounds of fiber; 10.7 million pounds of hemp seed)
- By 1948- 3 million pounds
- No recorded production after the late 1950's



Controlled Substances Act of 1970

21 U.S.C. §801, et. seq.

- Prohibits production of hemp without a federal permit
- “[M]arihuana means all parts of the plant *Cannabis sativa* L...” (21 U.S.C. §802(16))
- Does not distinguish between low- and high-THC varieties
- In 2007, North Dakota farmers challenged DEA’s authority to prohibit hemp production pursuant to state law (case dismissed)



Controlled Substances Act of 1970

“Marihuana” [A]ll 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)
21 U.S.C. §801, et. seq.



Controlled Substances Act of 1970

Illegal to:

- Manufacture (grow), sell or possess
- Conspire or aid and abet
- Advertise
- Sell paraphernalia



DEA Develops Rules

- In March 2003, DEA issued two final rules on the legal status of hemp products
- Finds that hemp often contains THC, use only allowed under “highly controlled circumstances”
- Prohibits cannabis products containing THC intended for human consumption
- In February, 2004, Ninth Cir. C.A. permanently enjoins enforcement of rule (*Hemp Industries Association v. Drug Enforcement Administration*, 357 F.2d 1012 (2004))



Cole Memo

- In August 2013, the Department of Justice updated its marihuana enforcement policy following legalization of marihuana in Colorado and Washington
- Reiterated the position that marihuana is an illegal drug and stated that it will “aggressively enforce this statute”
- Identified 8 areas of priority, including use of marihuana by minors, driving while under the influence and cultivation on public lands
- Renewed in 2017



2014 Farm Bill

- § 7606 allows certain research institutions and state departments of agriculture to grow industrial hemp “for purposes of research conducted under an agricultural pilot program or other agricultural or academic research”, if allowed under state laws
- “industrial hemp” defined as containing a THC concentration of not more than 0.3% on a dry weight basis
- Note that Senator McConnell and others introduced an amendment that would have excluded industrial hemp from the definition of marijuana under the CSA



FY2015 Appropriations Bill

- “none of the funds made available” to the U.S. Dept. of Justice (DOJ) “may be used in contravention” of the 2014 Farm Bill
- Protection extended to December 2017
- However, court cases indicate that if protection is lifted, DOJ could retroactively prosecute charges within statute of limitations



2016 Federal Action

- July 19: Petition to reschedule marijuana denied. However, DEA announced that it would expand the number of places allowed to grow marijuana for its value in chronic pain relief (previously only University of Mississippi)
- December 14: DEA filed final rule notice establishing Controlled Substances Code Number for “marijuana extract”



Hemp Industries Association Litigation

- Ninth Circuit Court of Appeals action challenges December 14 proposed rule
- “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”
- Tracking of materials or extracts as illegal?



Impacts of Federal Law

- Limited banking options (cash business)
- Tax Code 280E- no deductions beyond cost of goods sold
- Limited intellectual property protection and enforceability
- Federal bankruptcy not available
- Employment issues

