

CBP Issues Updated Statement on Cannabis and Crossing the U.S. Border

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U.S. Customs and Border Protection (CBP) recently issued an updated statement on how they will enforce the U.S. rules and regulations prohibiting the sale, possession, production and distribution of marijuana, or the facilitation of the same. This updated statement, posted on October 9th at <https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-canadas-legalization-marijuana-and-crossing-border>, advises that:

“A Canadian citizen working in or facilitating the proliferation of the legal marijuana industry in Canada, coming to the U.S. **for reasons unrelated to the marijuana industry** will generally be admissible to the U.S. However, if a traveler is found to be coming to the U.S. for reasons related to the marijuana industry, they may be deemed inadmissible.”

It also recognizes the importance of the conflict between state and federal laws in the U.S., highlighting that:

“Although medical and recreational marijuana may be legal in some U.S. States and Canada, the sale, possession, production and distribution of marijuana or the facilitation of the aforementioned remain illegal under U.S. Federal Law. Consequently, crossing the border or arriving at a U.S. port of entry in violation of this law may result in denied admission, seizure, fines, and apprehension.”

This conflict of laws has created confusion in advance of the broad legalization of marijuana across Canada. It is important to recognize also that the legality of the use of cannabis in Canada after October 17th is not retroactive—or to summarize, the law in Canada may have changed, but all is not forgiven. A Canadian can still be deemed inadmissible for (1) having committed past actions violating; (2) admitting to having committed acts that constitute the essential elements of a violation of; or (3) having aided or abetted the violation of “any law or regulation of a State, the United States, or a foreign country relating to a controlled substance” prior to October 17, 2018, as is also pointed out in the updated statement.

We anticipate that there could be some confusion concerning whether forward-looking acts (after October 17, 2018) could “constitute the essential elements of a violation of (or an attempt or conspiracy to violate) any law or regulation of a State [or] the United States...relating to a controlled substance.” Cannabis is still listed as a Schedule 1 substance in the U.S. Controlled Substances Act, making it illegal at the federal level in the U.S. to sell, possess, produce or distribute (or to facilitate these acts). It remains to be seen whether or how CBP uses this provision of the law to deny entry to Canadians in the future, based on their acts before or after the legalization of cannabis in Canada.

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