

PART 40 QUESTIONS AND ANSWERS

The Office of Drug and Alcohol Policy and Compliance and the Office of the General Counsel of the U.S. Department of Transportation are providing this question and answer. It constitutes official guidance and interpretation concerning 49 CFR part 40 (see 49 CFR 40.5).¹

This Question and Answer is dated 05/26.

¹ These FAQs do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies, and compliance may be achieved in more than one way.

QUESTION:

Recently, the Drug Enforcement Administration (DEA) issued an order (Order) that reclassified FDA-approved drug products derived from marijuana and marijuana products regulated by a State medical marijuana license from Schedule I to Schedule III drugs under the Controlled Substances Act (CSA). When reviewing a laboratory reported marijuana positive drug test result, can a Medical Review Officer (MRO) deem the test a “negative” if the employee alleges the positive resulted from consuming a State licensed marijuana product?

ANSWER:

- No. Currently, there is no instance when the MRO could verify a laboratory-confirmed marijuana positive drug test result as “negative” when an employee claims the positive was caused by a State licensed marijuana product.
- Even after rescheduling, State-dispensed marijuana does not constitute an FDA-approved drug. Without FDA approval for a controlled substance, it cannot be prescribed.
- A “legitimate medical explanation” requires use of a legally prescribed controlled substance in compliance with Federal laws governing such a prescription. 49 CFR §§ 40.137(a); 40.141(b).
- Although the MRO may be presented with documentation such as State-issued medical marijuana cards, physician recommendations or certifications, or dispensary records or receipts, these documents do not satisfy part 40 requirements for a “legitimate medical explanation.”
- Marijuana use under State marijuana programs or other non-prescription sources do not qualify as a “legitimate medical explanation” under 49 CFR § 40.137(a). In addition, marijuana use is not compatible with safety-sensitive functions.