



LAW OFFICES OF
MICHAEL E. CINDRICH APC

March 21, 2018

**PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION
CONTAINING PROTECTED ATTORNEY WORK PRODUCT**

I. Remedy Rolls Compliance with Federal Law

The Federal CSA defines marijuana as: “all 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.”¹

Industrial hemp is defined as the plant *Cannabis sativa* L. and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis. The term “tetrahydrocannabinols” includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols.²

The exemption of the mature stalks of the plant *Cannabis sativa* L. suggests that industrial hemp does not fall under the federal definition of marijuana. However, when Congress excluded from the definition of marijuana the mature stalks of such plant, fiber, oil or cake made from the seeds, it also made an exception to the exception, and included the resin extracted from the excepted parts of the plant, despite the stalks and seed exception. Thus, if a product were produced using resin from any part of the cannabis plant (including the parts excluded from the CSA definition of marijuana), such a product would fall under the federal definition of marijuana, and would thus be deemed unlawful.

Here, if the Remedy Rolls are made from the non-excluded portions of the plant, the federal government is likely to deem the product marijuana because those portions of the plant fall under the federal definition of marijuana. However, it is our opinion that if the Remedy Rolls are made from the excluded portions of the plant, the federal government will likely treat the product as industrial hemp, so long as it contains only trace amounts of THC. Please note that the

¹ 21 USC § 802(16).

² 7 USC § 5940(b)(2).

process of obtaining industrial hemp may be subject to strict federal and state regulations as discussed below.

II. Use of Hemp Produced in Other States

In 2014, the Farm Bill authorized institutions of higher education or state departments of agriculture to cultivate industrial hemp if: “cultivated for purposes of research under an agricultural pilot program or other agricultural or academic research, and allowed under the laws of the state in which the institution or department is located and the research occurs.”³

The Farm Bill opened the door to much confusion about the circumstances under which the sale of industrial hemp products is permissible. Due to this confusion, the United States Department of Agriculture (USDA), United States Drug Enforcement Administration (DEA), and the United States Food and Drug Administration (FDA) issued a statement to clarify how the federal law applies to activities involving industrial hemp: “industrial hemp may be grown pursuant to a pilot program for purposes of marketing research by institutions of higher education or State departments of agriculture (including distribution of marketing materials), *but not for the purpose of general commercial activity.*”⁴

Despite the federal government’s position on industrial hemp grown for commercial purposes, the Consolidated Appropriations Act of 2017 prohibits federal agencies from expending federally appropriated monies to interfere with or otherwise frustrate intrastate or interstate distribution of the Domestic Products grown in accordance with the Farm Bill.⁵ As long as this provision is renewed annually, the federal government will not have funds to interfere with the cultivation and sale of industrial hemp that is grown and distributed pursuant to the Farm Bill. While the Consolidated Appropriations Act of 2017 may protect businesses from federal prosecution, it is important to understand that it does not unequivocally legalize interstate sales of hemp products for commercial purposes.

Here, you obtain the hemp required to make the Remedy Rolls from Oregon. The legality of the hemp depends on how the hemp is grown. It is our opinion that hemp grown pursuant to the Farm Bill in Oregon may be sold in California for market research purposes only. This means that the hemp cultivator in Oregon must cultivate pursuant to the Farm Bill – i.e., must have the proper state and federal licensing and certification. Additionally, California law must allow industrial hemp.

Thus, hemp products grown from industrial hemp pursuant to the Farm Bill, using the exempted portions of the cannabis plant, which are sold for market research purposes, may be distributed in accordance with individual state laws regarding THC and hemp.

³ 7 USC § 7606(b)(2).

⁴ Statement of Principles on Industrial Hemp,

<https://www.federalregister.gov/documents/2016/08/12/2016-19146/statement-of-principles-on-industrial-hemp>.

⁵ Id.

III. California Laws

Senate Bill 94 defines cannabis as “all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, ‘cannabis’ does not mean ‘industrial hemp’ as defined by Section 11018.5 of the Health and Safety Code.”⁶

Industrial hemp is defined as a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.⁷

The California definition of cannabis mirrors that of the CSA – it provides for the same exemptions as the federal definition of marijuana. Additionally, California’s definition of cannabis specifically exempts industrial hemp. As a result, it is our opinion that Remedy Rolls made from the exempted portions of the plant that contain trace amounts of THC will likely not fall under the State definition of cannabis.

IV. Public Consumption

Smoking or ingesting cannabis or cannabis products in a public place is prohibited.⁸ Additionally, smoking cannabis or cannabis products in a location where smoking tobacco is prohibited, is not permitted.⁹ Cannabis product means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.¹⁰

Here, Remedy Rolls are not likely to be considered a cannabis product, as they are not in the form of concentrated cannabis. As stated above, the California definition of cannabis exempts portions of the plant that you use to make Remedy Rolls. It is our opinion that public consumption in California would likely be allowed wherever smoking tobacco is not prohibited, so long as the Remedy Rolls are made from the exempted portions of the plant.

⁶ Bus. & Prof. Code § 26001(f).

⁷ HS § 11018.5

⁸ HS § 11362.3(a)(1).

⁹ HS § 11362.3(a)(2).

¹⁰ HS § 11018.1

V. Can Remedy Rolls Be Sold at Non-Dispensary Locations?

It is our opinion that Remedy Rolls can be sold in California at non-dispensary locations so long as they contain no more than trace amounts of THC and are only sold in jurisdictions that allow the sale of hemp products. Please be advised that you must strictly adhere to the regulations of all local jurisdictions.

VI. Packaging & Labeling

If the hemp used to create Remedy Rolls contains no THC, you would likely not be required to display the cannabis product labeling requirements issued by the California Department of Public Health (CDPH).

Please note that the legal analysis and opinions included herein are part of our professional judgment, but are not a guaranty of an outcome or result. The federal agencies referenced would likely contest our interpretations, and may seek enforcement against individuals and organizations engaged in these activities. We cannot provide clear guidance on these issues until there is clarification from the courts or the legislature.

Please do not hesitate to contact us with any follow up questions or concerns you may have relating to the issues addressed herein.

Sincerely,

Marina Kublanovskaya
Associate Attorney