



Public Affairs Guidance

MARIJUANA ENFORCEMENT AT U.S. BORDERS

October 9, 2018

Background and Timeline

On June 19, 2018, Canada's Parliament voted to approve legislation legalizing marijuana. Next, the provinces will implement laws governing the sale, possession, distribution and use of marijuana throughout Canada. Final implementation of new Canadian marijuana laws is set for October 17, 2018.

In addition, certain U.S. states have legalized marijuana for medical or recreational use.

As Canada nears implementation of marijuana legalization, CBP will continue to inform travelers that U.S. federal law is unchanged and that CBP will continue to enforce the law at the U.S. borders to include Preclearance ports.

All individuals entering the U.S. are subject to examination by CBP. All aliens entering the U.S. are presumed to be intending immigrants until they satisfy the inspecting officer that they are otherwise admissible. Generally, an inspection is to determine the identity, alienage, and admissibility of the individual and goods their possession. Further, the Immigration and Nationality Act (as amended) does not allow for the admission of any alien deemed inadmissible under §212 which identifies more than 60 grounds of inadmissibility. *See INA § 212(a) and generally §214(b) and §235(a)(3)*. Based on U.S. Immigration Law, an alien who admits to using a controlled substance may be found inadmissible. However, CBP has the discretion to issue a waiver or parole the individual into the United States on a case by case basis

Secondary inspection referrals related to controlled substances may result for a variety of reasons, to include: a canine alert, an alien's admission of possession of a controlled substance during a primary inspection, or simply observations made by a CBP officer.

For all referrals related to controlled substances:

- Travelers will be subject to a personal search and all personal belongings will be searched.
- If applicable, the conveyance will be subject to additional inspection, including physical search of all luggage or items within the conveyance to include cargo.
- Additional questioning will occur to determine if any grounds of inadmissibility apply.

Regardless of the outcome of the inspection, the potential increase in the number of travelers referred to secondary may result in an increase in time and resources required to inspect each traveler arriving at the U.S. border.

While admissibility decisions will still be made by a CBP officer on a case by case basis given the facts of the case known to the officer at the time of inspection, the legalization of marijuana in Canada may lead to a general increase in inadmissible aliens arriving from Canada.

Public Affairs Objective

1. To reiterate that the United States is a welcoming country, and encourages the legitimate flow of travel and trade over our nation's borders.
2. To inform the public that while laws governing marijuana in individual U.S. states and other nations may change, CBP will continue to enforce U.S. Federal Law, which prohibits the possession of marijuana. Also, to inform the public that if travelers are found in possession of marijuana or found to be associated with the marijuana industry at the border or in Preclearance locations they may be subject to seizure, fines, denied entry and apprehension, under U.S. Federal Law.
3. To advise that CBP officers are thoroughly trained on admissibility factors and the Immigration and Nationality Act which broadly governs the admissibility and inadmissibility of travelers into the United States. Determinations about admissibility are made by a CBP Officer based on the facts and circumstances known to the officer at the time.

Guidance

CBP Office of Public Affairs at Headquarters is the lead on questions from a national perspective. The OPA HQ Public Affairs point of contact for CBP OPA is (b)(6);(b)(7)(C)

Local news media inquiries can be responded to by field PAOs.

Key Messages

- U.S. Customs and Border Protection enforces the laws of the United States. 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. Crossing the border with marijuana remains prohibited and can result in seizure, fines, and/or apprehension.
- CBP is always concerned about criminal activity at our U.S. borders. CBP officers are the nation's first line of defense, including prevention of illegal importation of narcotics, including marijuana. U.S. federal law prohibits the importation of marijuana and CBP officers will continue to enforce that law.
- CBP officers are thoroughly trained on admissibility factors and the Immigration and Nationality Act which broadly governs the admissibility of travelers into the United States. Determinations about admissibility are made by a CBP Officer based on the facts and circumstances known to the officer at the time. Possession and/or admission to the use of marijuana by an alien may result in the refusal of admission.

Supporting Messages

- The United States has been and continues to be a welcoming nation. U.S. Customs and Border Protection not only protects U.S. citizens and lawful permanent residents in the country but also wants to ensure the safety of international travelers who come to visit, study and conduct legitimate business in the United States.
- As the agency charged with determining admissibility of aliens at ports of entry, under U.S. immigration law (Section 291 of the Immigration and Nationality Act [8 USC 1361]), applicants for admission to the U.S. bear the burden of proof to establish that they are clearly eligible to enter the United States. In order to demonstrate that they are admissible, the applicant must overcome all grounds of inadmissibility.
- CBP enforces the laws of the United States. The legal sale or use of marijuana in other countries does not affect U.S. law enforcement.
- Travelers should be cognizant that U.S. Federal Law prohibits marijuana possession, and that U.S. laws on marijuana will continue to be enforced at our borders regardless of changes in foreign laws.
- CBP works closely with state and local law enforcement partners. If an individual is suspected of driving under the influence, CBP will coordinate response with the proper local authorities.
- Entry requirements for international travelers wishing to enter the United States are governed by and conducted in accordance with U.S. federal law, which supersedes state laws.

Official Statement

U.S. Customs and Border Protection enforces the laws of the United States and U.S. laws will not change following Canada's legalization of marijuana. Requirements for international travelers wishing to enter the United States are governed by and conducted in accordance with U.S. Federal Law, which supersedes state laws. 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.

CBP officers are thoroughly trained on admissibility factors and the Immigration and Nationality Act, which broadly governs the admissibility of travelers into the United States. Determinations about admissibility and whether any regulatory or criminal enforcement is appropriate are made by a CBP officer based on the facts and circumstances known to the officer at the time.

Generally, any arriving alien who is determined to be a drug abuser or addict, or who is convicted of, admits having committed, or admits committing, acts which constitute the essential elements of a

violation of (or an attempt or conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance, is inadmissible to the United States.

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 reason related to the marijuana industry, they may be deemed inadmissible.

CBP officers are the nation's first line of defense in preventing the illegal importation of narcotics, including marijuana. U.S. federal law prohibits the importation of marijuana and CBP officers will continue to enforce that law.

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Q&As

Q: How will law enforcement change on the border when Canada legalizes marijuana?

A: Nothing will change at the U.S. border or at Preclearance locations. U.S. Customs and Border Protection enforces the laws of the United States. Although medical and recreational marijuana may be legal in certain U.S. States as well as Canada, the sale, possession, production and distribution of marijuana or the facilitation of the aforementioned all remain illegal under U.S. federal law.

Q: Will CBP officers be permitted to ask travelers about marijuana use?

A: CBP officers have broad latitude to question travelers during the inspection process, including about the use of illegal drugs. CBP is charged with determining admissibility of aliens at ports of entry. Under U.S. immigration law (Section 291 of the INA [8 USC 1361]; *see also* INA § 235(a)(3) (8 U.S.C. § 1225) (“All aliens . . . who are applicants for admission . . . shall be inspected by immigration officers.”)), applicants for admission bear the burden of proof to establish that they are clearly eligible to enter the United States. In order to demonstrate that they are admissible, the applicant must overcome ALL grounds of inadmissibility.

Specific grounds of inadmissibility can be found in INA § 212(a), which lists more than 60 grounds of inadmissibility divided into several major categories, including health-related, prior criminal convictions, security reasons, public charge, labor certification, illegal entrants and immigration violations, documentation requirements, and miscellaneous grounds.

Q: Can a traveler refuse to answer questions about their marijuana use?

A: Refusing to answer an officer's questions may result in delays, or, in the case of aliens, denial of admission into the U.S.

Q: Can CBP officers inspect electronic devices of a traveler suspected of marijuana use?

A: All travelers arriving to the U.S. are subject to CBP inspection. This inspection may include electronic devices such as computers, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players and any other electronic or digital devices.

Q: What happens if a traveler has marijuana in their possession while crossing the border into the U.S.? Does anything change if it is declared?

A: All travelers are prohibited from possessing marijuana when crossing the U.S. border, or through a Preclearance port. Travelers who do not declare they are in possession of marijuana, including paraphernalia, may be subject to seizure, fines, arrest, or in the case of aliens, denial of admission into the U.S.

CBP officers are thoroughly trained on admissibility factors and the Immigration and Nationality Act, which broadly governs the admissibility of travelers into the United States. Determinations about admissibility are made by an immigration officer based on the facts and circumstances known to the officer at the time, including responses to questions that are posed by CBP officers.

Q: Will this be a potential drain on resources if there are additional referrals?

A: Additional referrals can be expected as some travelers might attempt to cross the U.S. border, or Preclearance, with marijuana in their possession. CBP has communicated to travelers via social media, the press, and other communication outlets that attempting to cross the U.S. border, or Preclearance with marijuana is illegal.

Because the residue of using marijuana remains on a person and in their belongings, vehicle, etc., there will be additional instances of canine alerts causing additional secondary referrals. This has the potential to cause delays depending on the size and volume of traffic at the port as we do not anticipate increasing staffing levels due to the legalization of marijuana in Canada; however, we do not know how much of an impact it will cause at this time.

Q: Does admitting to marijuana use make an alien inadmissible?

A: Admissibility decisions and any follow-on actions are made by CBP officers on a case-by-case basis taking into account the entirety of the situation and all available information. In all inspections, determinations about admissibility and whether any regulatory or criminal enforcement is appropriate are made by a CBP Officer based on the facts and circumstances known to the officer at the time. Aliens must overcome all grounds of inadmissibility, including admissions of past violations of controlled substance law. Possession and/or admission to the use of marijuana by an alien may result in the refusal of admission.

An alien who admits to being a drug abuser or addict may be inadmissible under INA § 212(a)(1)(A)(iv). The CBP officer may refer the alien to an examination by a Panel Physician, who makes a determination of whether the traveler meets the criteria to qualify for the inadmissibility as a drug abuser or addict.

Q: If a traveler has a prescription for medical marijuana, will they be allowed to enter the U.S. with marijuana?

A: No, medical marijuana is also illegal under U.S. federal law.

Q: Will my status as a NEXUS or Global Entry member be affected if I use marijuana or am involved in the legal marijuana industry?

A: The requirements to be granted privileges in a Trusted Traveler Program are more stringent than admissibility requirements. Being a member of a trusted traveler program is a privilege, not a right and membership decisions are made on a case-by-case basis. As marijuana remains an illegal drug in the U.S., the use of it or involvement in the industry could make a person ineligible for Trusted Traveler membership. A person may be admissible to enter the United States, but be ineligible to be granted Trusted Traveler Program privileges. In addition, there is a continual review process where subsequent reviews may result in revocation of Trusted Traveler privileges.

Q: Will Canadians who are currently inadmissible to the U.S. because of marijuana violations still be required to obtain a waiver of admissibility in order to enter the U.S. once Canada legalizes cannabis?

A: The CBP Admissibility Review Office looks at a multitude of factors when determining the suitability of a waiver of inadmissibility. Each request is considered individually and is based on the facts and circumstances presented and available to CBP.

Q: Is travel to the U.S. for the purposes of attending business meetings with companies engaged in the marijuana industry (in a U.S. state where it is legal) permissible? If so, is there a differentiation between those who physically handle marijuana materials vs. those working in the white collar aspects of commerce?

A: As marijuana is an illegal drug in the U.S., working or having involvement in the proliferation of the legal marijuana industry in U.S. States where it has been deemed legal may affect your admissibility to the U.S.

Q: If a traveler has affiliation with the legal marijuana industry in Canada, will they be inadmissible to the U.S.?

A: 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 reason related to the marijuana industry, they may be deemed inadmissible.

Q: Will there be a “forgiveness” policy/procedure in place for Canadians crossing the border with small personal amounts of marijuana who may be unaware that marijuana is illegal in the United States?

A: CBP officers will use their enforcement discretion when processing travelers at ports of entry in determining whether any regulatory or criminal enforcement action would be appropriate, taking into consideration the facts and circumstances known to the officer at the time.