

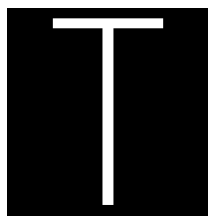


Marijuana is increasingly becoming regarded as a harmless and even beneficial drug. How will a safety-focused trucking industry deal with this new cultural norm?



# 18 WHEELERS AND WEED

By Jack Roberts  
Senior Editor  
[jroberts@truckinginfo.com](mailto:jroberts@truckinginfo.com)



his summer, one more state — Illinois — joined the ranks of states legalizing marijuana. According to Governing.com, as of June 25, 33 states and the Dis-


trict of Columbia have laws broadly legalizing marijuana. The District of Columbia and 11 states — Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont and Washington — have adopted the most expansive laws legalizing marijuana for recreational use. Other have legalized medical marijuana. Our neighbor to the north, Canada, became the first industrialized country in the world to legalize recreational marijuana last October.

According to polling conducted by Gallup, 66% of Americans supported legalization in 2018, compared to about 60% just two years earlier. In January, Rep. Earl Blumenauer (D-OR), a leading advocate for cannabis policy reform, announced the launch of the Congressional Cannabis Caucus for the 116th Congress. The bipartisan caucus provides a forum for House members to “discuss, learn, and work together to establish a better and more rational approach to federal cannabis policy.”

But this tide of legalization and sentiment is a challenge for trucking. Marijuana is classified at the federal level as a Schedule 1 controlled substance, which U.S. Department of Transportation regulations prohibit use of by commercial drivers and others in “safety-sensitive” transportation jobs — even in states that have fully legalized cannabis. In addition, the status of technicians and front-office employees seems to be a gray area. Some fleets, dealerships and manufacturers in legal states have ended random drug testing for non CDL-holding employees, but others adhere to standing corporate policies of zero tolerance.

Daimler Trucks North America, for example, is based in Portland, Oregon, one of the earliest states to legalize marijuana for recreational use. The company is still randomly drug-testing all its employees to screen for cannabis use — although a company spokesperson says that policy is under review.

When Colorado moved from medical marijuana to recreational, the impact was



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– Scott McCandless, McCandless Truck Centers

greater than the trucking industry in the state had expected, according to Greg Fulton, president of the Colorado Motor Carriers Association. Fleet members saw a rise in pre-employment drug testing failures. “One of our companies, a well-paying [less-than-truckload carrier], would tell people who were looking for a job, ‘Do not even bother to apply if you have partaken in this period of time, because we’re going to drug and alcohol test you tomorrow.’ And they still were getting a 60% failure rate.”

These kind of results lead some to worry that legalized marijuana and strict drug-testing laws and policies will only make a shortage of skilled workers worse, especially among truck drivers and shop technicians. For many, the intersection of marijuana use in an industry that places a priority on safety is yet another problem that must be overcome as trucking seeks to attract, recruit and retain talented employees.

“Marijuana use and company policies are coming up more and more frequently,” says Abigail Potter, manager, safety and occupational health policy at American Trucking Associations. “The employment laws are in upheaval as companies are looking at ways to provide caveats for medical marijuana and even recreational use. We’re seeing more and more states making accommodations for employees while trying to find policies that allow operations to maintain a high level of safety.”

All that said, the marijuana genie is clearly out of the bottle and likely won’t be going back inside any time soon. “Just look at the

revenue in Colorado,” Potter says. The state Department of Revenue in July reported that marijuana taxes, licenses, and fee revenue since retail marijuana sales were legalized in 2014 have now passed the \$1 billion mark.”

“To give a sense of the magnitude of what we have, we have more [medical marijuana] dispensaries and recreational [cannabis outlets], than Starbucks, McDonald’s, and Taco Bell combined,” says CMCA’s Fulton.

This is a concern for the American Trucking Associations, Potter says, “because states have a hard time resisting access to that much money. But at the same time, we’re trying to put forth an argument that any forward motion towards national legalization needs to have a highway safety component to it. So we are now trying to have conversations with officials on both the state and federal level about current marijuana laws, as well as future ones, and the impact they will have on public safety.”

Short of full legalization, Potter predicts that at some point in time, there will be a move to change marijuana from a Schedule 1 drug to a Schedule 2 drug, which could be relevant in states with medical marijuana laws. Schedule 2 drugs, such as synthetic opiates, can be legally used by commercial drivers with a valid prescription — under certain circumstances, as approved by a medical review officer. “Sometimes there have to be some accommodations. So it gets into a little more of a gray area.”

## Not your grandfather’s marijuana

Under federal law, CDL-holding truck drivers — including technicians with CDLs — are prohibited from using any form of cannabis, for medicinal or recreational use. While there is no data showing that a desire to use marijuana is further shrinking the talent pool for truck drivers, Potter admits that the possibility is becoming a concern.

“Our industry has done a good job working with the U.S. DOT to educate drivers that they are still prohibited from using marijuana for any reason,” she says. “But there have been challenges and there are a lot of mixed messages out there. The industry still has a zero-tolerance attitude in place — and there are no current signs that is going to change any time soon.”

Proponents of keeping strict policies prohibiting cannabis use by commercial drivers

PHOTO: GETTYIMAGES.COM/MICHAELBUCKO



**Drivers with a CDL are not allowed by federal law to use marijuana, even if they only operate in states where recreational use is legal.**

point to studies showing the effect of marijuana on highway safety.

After legalizing recreational use of marijuana, the states of Colorado, Oregon and Washington saw collision claim frequencies rise about 3% higher overall compared to neighboring states, according to a 2017 analysis from the Highway Loss Data Institute. A separate Insurance Institute for Highway Safety study examined police-reported crashes from 2012 to 2016, encompassing the time period before and after retail sales of marijuana began in the same three states. IIHS estimated that the three states combined saw a 5.2% increase in the rate of crashes per million vehicle registrations, compared with the neighboring states of Nebraska, Wyoming, Utah, Idaho, and Montana.

Yet multiple surveys have found that about half of marijuana users think it's safe to drive while high. Some who believe the current federal policy regarding commercial drivers and cannabis is too strict point to DOT's rules on alcohol consumption, which mandate a 24-hour period between any consumption of alcohol and going on duty behind the wheel. Why couldn't a similar policy apply to marijuana use?

The problem is that unlike alcohol use, there currently is no widely accepted, reliable way to determine actual marijuana impairment while driving.

And there's another reason for concern, according to Chuck Hayes, project manager of the Drug Evaluation and Classification Program for the International Association of

Chiefs of Police. Marijuana today is a lot more potent than the varieties your grandparents were puffing on at Woodstock.

"We all have that one friend who swears that they can drive better and safer when they're stoned," Hayes says, chuckling. "But this isn't the same kind of pot they were smoking back in the '60s and '70s. This stuff today can kick your fanny."

Hayes says the THC content — the psychoactive chemical in cannabis that produces the mellow, euphoric sensation known as a "high" — is much higher in today's varieties of the drug. He says a typical marijuana cigarette in the 1960s had a THC content of around 3%. "Today, it's more like 23%," he notes. "And because it's sold legally in many states, it's vastly easier for people to get — in-

**"I am 100% behind medical marijuana. We know now that it can be a great medicine and do wonders for kids experiencing seizures. It also works well in treating glaucoma, which my wife suffers from. And I'm not willing to turn away any medicine that will help her."**

**— Bob Dempsey, Fox & James  
Nationalease**

cluding novice or infrequent users.

"That's one reason we're having all kinds of problems with cannabis-infused gummies edibles, for example. People eat some of the candy or the cookie, or whatever it is, and they don't get an immediate high. They don't realize it takes longer for THC to enter your bloodstream when it has to be digested in your stomach first. And so they eat more and more of the product, and then it hits them like a sledgehammer right between the eyes."

Once the THC is in the user's bloodstream, Hayes says, it immediately begins to impair the brain's cognitive functions — the information-processing parts of the brain that are essential for safely driving any kind of vehicle.

"Maybe in 1965 you could smoke a little weed and drive OK," Hayes says doubtfully. "But that's not the case today. As the THC begins to affect the cognitive functions of the brain, you can't think or react quickly enough to deal with a dynamic driving environment. Novice or infrequent pot smokers have a problem with this because they don't feel drunk. They're not staggering around or anything. So they don't think they are impaired the way they are when they've consumed too much alcohol. But yet the thinking portion of the brain is impaired. They feel very mellow and relaxed. But those sensations affect everything from reaction times to overall judgement."

He cites two 2016 studies finding about a quarter of drivers who are arrested for driving under the influence of THC are pulled over because they were going well over the speed limit. One found 24%, the other nearly 28%. One study, published in the Journal of Forensic Sciences in November 2016, found that while driving behaviors under the influence of cannabis were similar to those seen in alcohol impairment, it did not find a correlation between performance on field sobriety tests and the concentration of THC tested in blood samples. That's why even well-trained law enforcement officers can have difficulty determining if a driver is stoned or not. Even if they are certain a driver has been using marijuana, there is — as yet — no universally agreed-upon standard of testing for impairment, and varying definitions of impairment in different states.

"It's just a crazy patchwork of laws out there



right now,” says ATA’s Potter. “We are hoping for a reliable roadside test that uses oral fluids to become available in the near future. Canada is using one such system now. And I think that will be the standard going forward.”

“We really don’t have any scientifically supported method to test for marijuana impairment,” Hayes adds. “We can swab a suspect’s mouth and get a positive result for THC or other drugs. But those tests only tell you that person used those drugs recently — perhaps within the past few hours. But they don’t tell you if they are impaired. And that can lead to problems in states where marijuana is legal. Because you don’t want to arrest somebody who has used a legal substance and is not impaired.”

Part of Hayes’ job is to train law officers on how to look for impairment when someone is suspected of being high behind the wheel. “If they do see signs the individual is under the influence of marijuana, then an arrest can be made, and that assessment — a roadside test along with officers’ evaluation — can be augmented with a blood test. And that’s the most accurate testing method we currently have, because that can tell you if the THC is psychoactive in the blood stream and the person is actually under the influence of the drug and impaired. But it’s a very different procedure from performing a breathalyzer roadside test for alcohol.”

## Mixed emotions

Whether or not the changing laws and social attitudes about marijuana are good or bad, and how trucking should adjust to this new reality, all depends on who you talk to.

At one end of the spectrum is Scott McCandless, president of the McCandless Truck Center dealership in Aurora, Colorado. Although the Centennial State has long been a trailblazer in legalizing marijuana and was the first state to legalize it for recreational purposes, McCandless, who is in his 60s, is appalled by the normalization of what he sees as counterproductive — even destructive — behavior.


“I think it’s a gateway drug,” McCandless says flatly. “And I think its legalization will continue to degrade the youth in this country and make it that much harder for them to integrate productively into the workforce when they become adults.”




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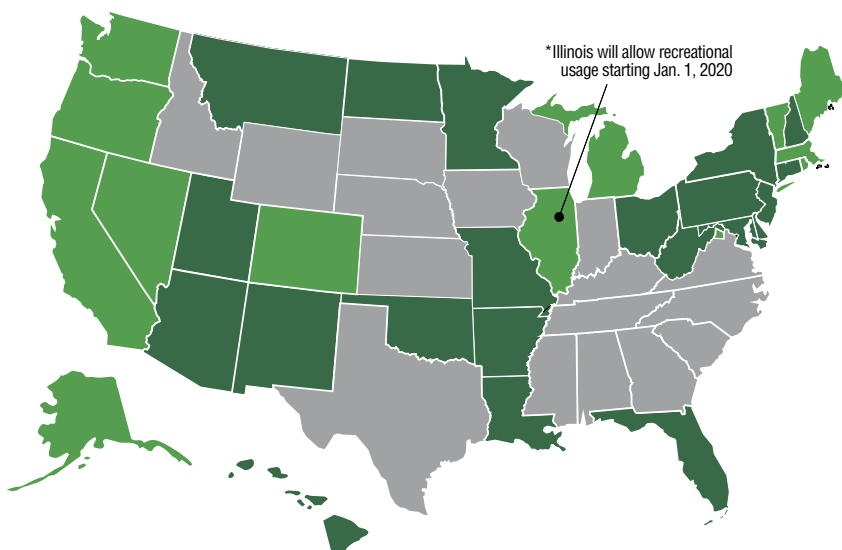
Asked if legalization has been an overall positive for his state, McCandless has mixed emotions. "That's a good question," he says. "We've certainly seen significant population growth over the past few years. And some people say that's because of legalization. As a businessman, I'm all about growth. And I've had a few customers who are making money serving that industry — hauling special organic soil to growers out in Colorado Springs. But I still feel the overall effects are negative."

McCandless Truck Centers has not altered its zero-tolerance drug policy and has no plans to do so. "Virtually every position at this company requires sensitive, safety-focused work. So my policy fallback is federal law. It's still illegal under federal law, and that's what we follow here."

Although the company has seen a 5% increase in positive drug screenings since marijuana became legal, McCandless says he's seen no sign that his company's strict no-drugs policy has hurt his ability to hire

### MARIJUANA LEGALIZATION STATUS

■ MEDICAL MARIJUANA ■ RECREATIONAL AND MEDICAL  
■ NO BROAD LAWS LEGALIZING MARIJUANA



Some states that don't have laws broadly legalizing medical marijuana do have narrow exceptions, such as permitting cannabis-infused products or allowing medical weed only for certain conditions. But for CDL holders, it's all prohibited.

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talented workers. “Maybe we’ve got such a reputation that people who use marijuana don’t even bother to apply here,” he says. “And as a CDL holder, I am subject to random drug testing myself.”

The possibility that those federal rules could change troubles McCandless. “Do we really want people who are up smoking marijuana the night before waking up and driving an 80,000-pound truck down the road the next day? I just do not think that’s a good idea. And I hope we don’t get to the point where that’s considered acceptable behavior in this industry.”

Bob Dempsey is about McCandless’ age but takes a more pragmatic view of legalization. A genial fellow with the rich baritone of a Golden Age radio announcer, Dempsey brings an interesting perspective to the topic: He is director of maintenance at Fox & James National Lease in Latrobe, Pennsylvania. But he also moonlights as a Pennsylvania game warden. In that law enforcement role, Dempsey personally took over 100 pounds of marijuana off the streets in 2017. “About 80% of the people I deal with as a game warden have marijuana on them,” Dempsey says. “Most of the time they’re just out in the woods looking for a secluded place to get high. Sometimes they’re growers. As game wardens, we run into marijuana on an almost daily basis.”

Dempsey believes legalization is coming — and that trucking should begin preparing now. “We have legal medical marijuana in Pennsylvania now. And my gut feeling is legalization for recreational use will be here within a year.”

And — perhaps surprisingly, given his

“Maybe in 1965 you could smoke a little weed and drive OK. But that’s not the case today. As the TCH begins to affect the cognitive functions of the brain, you can’t think or react quickly enough to deal with a dynamic driving environment.”

— **Chuck Hayes, International Association of Chiefs of Police**

law enforcement background — Dempsey is just fine with that. “I am 100% behind medical marijuana,” he says. “We know now that it can be a great medicine and do wonders for kids experiencing seizures. It also works well in treating glaucoma, which my wife suffers from. And I’m not willing to turn away any medicine that will help her. And there

may be people out there whose use of medical marijuana allows them to return to the workforce. If you have a skilled person who needs to use it for medicinal purposes, but it keeps them working and doing a good job for you — why on earth would you drug test them and turn them away?

“And we’re already starting to see that view

The advertisement features a bright yellow background. At the top, a black rectangular stamp with a distressed, ink-like border is tilted diagonally, containing the words "GUARANTEED." and "FASTER." in bold, white, sans-serif capital letters. Below the stamp is a large black silhouette of a cat's head, facing right. Inside the cat's head, the words "CAT" and "SCALE" are written in a bold, white, sans-serif font, with "CAT" positioned above "SCALE". A registered trademark symbol (®) is located to the right of "SCALE". A black banner with a dashed white border runs horizontally across the middle of the advertisement. Below this banner, the text "WEIGH. PAY. GET GOING." is written in large, bold, white, sans-serif capital letters. Underneath this, in a smaller white font, is the text: "You know you can trust CAT Scale for guaranteed accurate weights. You can get that same guarantee even faster by using the Weigh My Truck app. Weigh and pay all from your mobile device without leaving your cab." At the bottom of the advertisement, there is a white section. On the left, it says "We've got your back, so you can weigh, pay and get going." followed by the phone number "1-877-CAT-SCALE (228-7225)" and the website "catscale.com | weighmytruck.com". Below this, it says "Now accepting:" followed by logos for COMDATA, EFS, and various payment methods including PayPal, American Express, Visa, Mastercard, and Discover. On the right side of this white section, the text "Weigh My Truck" is written in a large, bold, black font, with a small CAT Scale logo above the word "Weigh". The word "My" is in a smaller font, and "Truck" is in a large, bold font. A stylized yellow and black graphic element is positioned to the right of the text.





In states where recreational use of marijuana is legal, drivers could unknowingly partake of cannabis in edible goodies at a party – and fail a drug test.

PHOTO: GETTYIMAGES.COM/JUANMONINO

reflected in court cases, where the judge essentially says just because somebody tests positive for cannabis in a legal state, that's not a good enough reason not to hire them."

The National Law Review in June noted that many state and local jurisdictions have enacted anti-discrimination laws concerning marijuana use. Such laws typically prohibit employers from taking adverse action against an employee who uses marijuana in compliance with the local jurisdiction's marijuana laws, so long as the employee does not consume cannabis at work and is not impaired while on the job. Although courts tended to side with employers in the first wave of employment cases concerning marijuana use since marijuana legalization

began, the NLR reports, "Recent decisions in federal and state courts indicate that employers need to proceed with caution when they make employment decisions concerning drug tests for cannabis use."

Dempsey says he feels the same about recreational use. "A person's private time is theirs. And what they do on their own time — as long as they're not hurting anybody — is their business. So for me, it really comes down to determining impairment. Because in our industry, that is what matters at the bottom line."

Otho Ries is a Gen Xer with long hair, a long beard, tattoos and a penchant for heavy metal. He's also the Arkansas Area truck shop manager for Peco Foods, based in Pocahontas,

Arkansas. Ries grew up on the rough edge of Arkansas society and witnessed firsthand the devastation that drug addiction did to both family and friends. He considers marijuana a benign substance compared to the hard drugs he saw around him growing up.

"Beer is a gateway drug," Ries says. "We all know people who have their first can of beer — and flash-forward 10 years and they're a meth head. So it's not fair to apply that label to marijuana alone."

Ries acknowledges that trucking has been slow to respond to legalized weed, but thinks it's simply a matter of time before reality steps in and forces change. "It's going to happen in every industry. Not just ours," he says. "Fleets will be really stringent at first, and then people will chill when they realize it's not as big an issue as they were anticipating."

The current state of affairs has cost Ries several talented technicians over the years because they couldn't pass a random drug screening.

"The best tech I ever had was a Gulf War vet who came home all messed up from being over there," Ries says. "When his head was clear, he'd run circles around everybody else. But the VA had him on 17 different medications. And he was like a zombie on that stuff. Then one day, he quit taking all that crap and just started smoking weed for medicinal purposes. And he was awesome. But one day we got popped for a random screening. And he just walked up to me and handed me his pass card and said, 'It's been real, bro. But I can't pass that piss test.' And I lost the best tech I had right then and there."

Ries believes the loss of talent like this is doing more harm to the industry than people using marijuana. "As an industry, we know we have to figure this out," he says. "If people are using marijuana legally or for legitimate medical purposes — if they're following the laws and not working or driving while impaired — I don't see how we can punish them for that. It's not fair to penalize people for what they do on their own time. We don't own them or pay them for that time. If they show up for work on time, ready to go, and aren't impaired, I don't see what the problem is." 🍓

### CBD OILS CAN RESULT IN DRUG-TESTING VIOLATION

Cannabidiol (CBD) oil is becoming a commonly used natural alternative to pain medicine. But commercial drivers should be cautioned that use of CBD oil may result in a positive DOT drug test, putting their careers at risk, warns Kathy Close, a transportation editor at J.J. Keller & Associates, which offers safety and compliance products and services.

The cannabis sativa plant comes in two strains, each of which has the potential to produce CBD oils. Hemp is bred for fiber, oils, and nutritional benefits and has only 0.3% THC concentration. Marijuana is bred for the production of THC and has 5-30% THC concentration.

Looking at THC (tetrahydrocannabinol) concentrations alone, you might incorrectly assume that only marijuana-based CBD oil has the potential to show up in a DOT drug panel. THC concentration is dependent upon the manufacturing process and how much oil the individual is using. Even hemp-derived CBD oils can register at a level that is considered a DOT drug testing violation.

Use of THC is forbidden for a regulated driver, no matter the source. As a result, medical and recreational marijuana and some CBD oils, even if legal under state law, are federally banned. And because THC is an absolute under DOT drug testing, a medical review officer is not allowed to take the medicinal use of a CBD oil into consideration as he or she determines a drug test result.



Watch for additional installments in this series at [www.truckinginfo.com/undertheinfluence](http://www.truckinginfo.com/undertheinfluence).

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